(25,803)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 973.

GUY B. BIDDINGER, APPELLANT,

vs.

THE COMMISSIONER OF POLICE OF THE CITY OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print
Citation and service	*a*	1
Petition for writ of *habeas corpus*	1	2
Writ of *habeas corpus*	4	4
Return of police commissioner to writ of *habeas corpus*	6	5
Exhibit—Executive warrant for arrest of Guy Biddinger	7	5
Traverse	9	6
Colloquy between court and counsel, &c	14	9
Testimony of John A. Waldron	41	23
Colloquy between court and counsel	58	34
Testimony of Auguest W. Donke	71	43
Colloquy between court and counsel	74	45
Exhibit 1 (not set out)	97	58
Exhibit 2—Requisition from Governor of Illinois to Governor of New York	98	58

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 2, 1917.

	Original.	Print
Exhibit B—Petition for requisition to Governor of Illinois, &c.	99	59
C—Indictments	101	60
1 (November 11, 1916)—Petition for requisition, &c.	136½	78
2 (November 11, 1916)—Affidavit of Ike Kline	138	79
James M. Markham.	142	81
Frank T. Hill.....	143	82
Patrick J. Cooney...	145	83
John R. Herren.....	147	85
Certificate of Governor of Illinois	156	91
Proceedings in the Municipal Court of Chicago	157	92
Complaint	157	92
Affidavit of Christian P. Bertsche	162	95
Affidavit of Stephen P. Ciesiekki	165	97
Warrant to arrest Guy Biddinger	171	101
Certificates of clerk and judge	173	102
Complaint of Benjamin Leeman	174	103
Affidavit of Benjamin Leeman	176	104
Exhibit 3 (November 11, 1916)—Warrant to arrest Guy Biddinger	178	105
Exhibit No. 32 (November 11, 1916)—Affidavit of Shelby M. Singleton	180	106
Affidavit of Verda S. Biddinger	182	107
Virgilia Biddinger	183	108
Claude Biddinger	184	108
Lucy F. Biddinger	185	109
Martin W. Grosse	186	109
Robert E. Cantwell	189	111
William F. Quinn	190	111
William W. Quinn	191	112
Letter, Hatfield, Governor of West Virginia, to Whitman, Governor of New York, April 18, 1916	192	113
Exhibit 15 (November 15, 1916)—Letter, Hatfield to Whitman, April 25, 1916	193	113
16 (November 16, 1916)—Letter, Dunne to Whitman, April 25, 1916	195	114
17 (November 15, 1916)—Telegram, Whitman to Dunne, April 25, 1916	196	114
A (November 11, 1916)—Letter, Dunne to Whitman, April 28, 1916, recalling requisition	197	115
19 (November 15, 1916)—Letter, Whitman to Dunne, May 1, 1916	198	115
Exhibits A and B (November 21, 1916)—Telegram, Waldron to Grossman, May 1, 1916	199	116
Revoking order of Whitman, Governor, April 1, 1916	200	116
Letter, Hatfield to Whitman (no date)	201	116
Letter, Grossman to Potter, June 24, 1916	202	117
Letter, Grossman to Whitman, June 27, 1916	208	121
Letter, Hatfield to Whitman, June 28, 1916	210	122

	Original.	Print
Letter, Grossman to Whitman, June 28, 1916	212	123
Letter, Grossman to Potter, June 28, 1916	212	123
Letter, Potter to Grossman, June 29, 1916	213	124
Telegram, Cantwell to Whitman, June 28, 1916	213	124
Letter, Grossman to Whitman, June 30, 1916	214	124
Telegram, Hatfield to Whitman, July 1, 1916	215	125
Letter, Grossman to Potter, July 3, 1916	216	125
Letter, Hatfield to Whitman, July 5, 1916	217	126
Letter, Potter to Hatfield, July 7, 1916	221	127
Affidavit of Robert E. Cantwell	222	128
Thomas C. Smith	223	128
Timothy J. O'Brien	224	129
Joseph P. Johnson	225	129
William J. Kealey	227	130
Exhibits 1 and 2 (November 21, 1916)—Rules and Regulations of Department of Police of City of Chicago	228	130
Proceedings before Charles S. Whitman, Governor of New York	230	131
Colloquy between Governor and counsel, arguments, &c	231	131
Testimony of Guy B. Biddinger	269	147
Testimony of Mr. Domke	306	167
Affidavit of Robert E. Cantwell	399	207
Proceedings before E. F. Dunne, Governor of Illinois	401	208
Letter, Hatfield to Dunne, April 22, 1916	401	208
Colloquy between Governor and counsel, &c	409	211
Affidavit of William Quinn	425	218
Arguments, colloquy, &c	427	218
Photographs	502	252
Final order	504	253
Petition for appeal and allowance	506	254
Certificate of Hand, J., as to probable cause	508	254
Citation (copy)	509	255
Amended assignment of errors	510	256
Stipulation as to statement of evidence, &c	520	262
Stipulation as to record	521	262
Clerk's certificate	521½	263
Stipulation and order extending time, &c	522	263

a Supreme Court of the United States of America.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

The President of the United States of America to the United States of America and the Commissioner of Police of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the 6th day of January, 1917, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, in a proceeding upon a writ of habeas corpus wherein Guy B. Biddinger is appellant, and the Police Commissioner of the City of New York is respondent, to show cause, if any there be, why the order made by the said United States District Court in said proceeding dismissing the writ of habeas corpus and remanding the relator to the custody of the Police Commissioner of the City of New York should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States this 7th day of December, in the year one thousand nine hundred and sixteen.

AUGUSTUS N. HAND,
U. S. D. J.

b STATE OF NEW YORK,
City of New York,
County of New York,
Borough of Manhattan, ss:

—— —— being duly sworn, deposes and says:—That he is — the — in the within-entitled action, that he has — read the foregoing — and knows the contents thereof; and that the same is true of — own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

—— ——.

Sworn to before me this — day of ——, 19—.

—— ——.

[Endorsed:] M. 2—85. United States District Court, Southern District of New York. In the Matter of the Application of Guy B. Biddinger for Release from Imprisonment upon a Writ of Habeas Corpus. Original. Citation. House, Grossman & Vorhaus, & Charles H. Griffiths, attorneys for appellant, 115 Broadway, Borough

of Manhattan, New York City. Service of a copy of the within citation is hereby admitted this 7th day of December, 1916. Isidor J. Kresel, Attorney for State of Illinois. U. S. District Court, S. D. of N. Y. Filed Dec. 7, 1916.

1 *Petition for Writ of Habeas Corpus.*

United States District Court, Southern District of New York.

In the Matter of GUY B. BIDDINGER.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The petition of Charles H. Griffiths made in behalf of Guy B. Biddinger, respectfully shows:

First. That the said Guy B. Biddinger is unlawfully imprisoned and deprived of his liberty at the Police Headquarters of the City of New York or at the City Prison, commonly known as The Tombs, in the City, County and State of New York, by John J. Hanley, Warden of the said City Prison or by Arthur T. Woods, Commissioner of Police of the City of New York, or by their agents, deputies, assistants or servants, whose names are unknown to your petitioner.

Second. That the said Guy B. Biddinger has not been committed nor is he restrained by virtue of any process or mandate issued by any Court of the United States or by any Judge, thereof in a case where such Courts or Judges have exclusive jurisdiction under the laws of the United States or have acquired exclusive jurisdiction by the commencement of legal proceedings in such a Court; nor has he been committed, nor is he detained by virtue of final judgment or decree of a competent tribunal of civil or criminal jurisdiction, the final order of such a tribunal made in a special proceeding, instituted for any cause, or by virtue of an execution or other process, issued upon such a judgment decree or final order.

Third. That the cause or pretense of the imprisonment
2 and restraint of the said Guy B. Biddinger according to your petitioner's best knowledge and belief, is by virtue of and pursuant to an arrest made upon an executive warrant issued by the Hon. Charles S. Whitman, Governor of the State of New York, upon a requisition made by the Governor of Illinois on the petition of Maclay Hoyne, State's attorney of the County of Cook, State of Illinois, and an affidavit made by Shelby M. Singleton, verified the 5th day of May 1916, and indictments of the Grand Jury of the County of Cook, State of Illinois, which requisition and affidavit and indictments are hereunto annexed and marked respectively Exhibits "A," "B" and "C."

Fourth. Your petitioner further avers that the said warrant was issued by the Governor of the State of New York solely upon the papers hereunto annexed and marked Exhibits "A," "B" and "C."

Fifth. And your petitioner further avers that the said warrant of the Governor is illegal and void, and that the said Guy B. Biddinger

is restrained of his liberty in violation of the laws of the United States for each and all of the following reasons:

(*a*) That there was no evidence submitted to the Governor of the State of New York upon which his warrant was issued that the said Guy B. Biddinger is a fugitive from justice from the State of Illinois.

(*b*) That the papers upon which the said Governor's warrant was issued showed that the said Guy B. Biddinger is not charged in the State of Illinois with any crime punishable under the laws of the State of Illinois.

(*c*) That a period of more than three years elapsed between the date of the crimes charged in the papers before the Governor and when the said Guy B. Biddinger left the State of Illinois, and the said charges are therefore barred by the Statute of Limitations of the State of Illinois.

3 (*d*) That the said Guy B. Biddinger was a resident of the City of Chicago and a resident of the State of Illinois for a period of more than four years after the date of the crime alleged to have been committed by the said Guy B. Biddinger.

(*e*) Because the demand for extradition *came* from the Governor of the State of Illinois was secured and obtained by fraud and deception for improper motives in bad faith and to serve private and not public ends.

(*f*) Because the papers upon which the executive warrant was issued does show that the said Guy B. Biddinger was in the State of Illinois at the time the crimes alleged in the indictment are alleged to have been committed.

(*g*) That the said Guy B. Biddinger was not and is not in fact a fugitive from justice from the State of Illinois and did not flee from the said State of Illinois for any purpose either to this or any other State.

Wherefore, your petitioner prays that a Writ of Habeas Corpus be issued requiring the production of the said Guy B. Biddinger as prescribed by law, and for such other and further relief as may be proper.

And your petitioner will ever pray.

New York, June 8th, 1916.

CHARLES H. GRIFFITHS,
Petitioner.

CITY AND STATE OF NEW YORK,
Southern District of New York, ss:

Charles H. Griffiths being duly sworn deposes and says that he is counsel for the petitioner that he has read the petition subscribed by him and believes it to be true.

CHARLES H. GRIFFITHS.

Sworn to before me this 8th day of June, 1916.

[SEAL.] S. H. RICHARDS,
Notary Public, #66, New York City.

There were annexed hereto copies of the petition, requisition, and indictments, printed herein as Exhibit No. 2 of November 10, 1916.

4 *Writ of Habeas Corpus.*

UNITED STATES OF AMERICA:

The President of the United States to John J. Hanley, Warden of the City Prison known as The Tombs, and Arthur T. Woods, Commissioner of Police of the City of New York, or to their agents, deputies, assistants, or servants, or other persons, having in his custody one Guy B. Biddinger, Greeting:

We command you that you have the body of Guy B. Biddinger by you imprisoned and detained, together with the time and cause of such imprisonment and detention, by whatever name the said Guy B. Biddinger shall be called or charged before the Hon. Julius M. Mayer, United States District Judge sitting in the Southern District of New York, forthwith in the United States Court House in the Post Office Building in the Borough of Manhattan, City and County of New York, forthwith to do and receive what shall then and there be considered concerning said Guy B. Biddinger, and have you then and there this writ.

Witness, Hon. Charles M. Hough, United States District Judge, Southern District of New York, this 8th day of June, 1916.

[SEAL.] ALEX GILCHRIST, JR., *Clerk.*

Allowed June 8th, 1916.

JULIUS M. MAYER, *U. S. D. J.*

House, Grossman & Vorhaus, Attorneys for Petitioner, 115 Broadway, New York City.

Hyman Turchin, William S. Butler, Charles H. Griffiths, of counsel, 120 Broadway, New York City.

5 *Endorsement on Back of Writ.*

(Endorsed.)

Writ adjourned to June 27th, 1916, at 10:30 A. M. same place pending the hearing and disposition of this writ the prisoner may be admitted to bail in the sum of Twenty thousand dollars ($20,000).

Dated June 8", 1916.

J. M. MAYER, *U. S. D. J.*

Defendant Guy B. Biddinger released in the sum of $20,000 bail.

Dated, New York, 6/8/16.

C. D. HOUGHTON,
U. S. Com., Southern Dis. of N. Y.

Hearing adjourned until after decision of Governor when five days' notice is to be given for the first succeeding motion calendar to fix

a later date for the argument. First motion not to be earlier than August 24th, 1916.

Dated, July 25th, 1916.

J. M. MAYER,
District Judge.

Referred to Clarence S. Houghton, U. S. Commissioner to take testimony. Final Hearing adjourned to November 20, 1916.

AUGUSTUS N. HAND,
U. S. D. J.

6 *Return of Police Commissioner to Writ.*

To the United States District Court, Southern District of New York, and Hon. Julius M. Mayer, Judge of the said Court:

I, the undersigned, the Police Commissioner of the City of New York, do hereby certify and make return to this Honorable Court to the annexed writ of habeas corpus heretofore served on me on June 8th, 1916; and, for a return thereto, I set forth and allege:

That I received the said writ on June 8th, 1916, and, at the time of the receipt thereof, there was in my custody, as Police Commissioner of the City of New York, the body of one Guy Biddinger, whom I believe to be the person named therein.

That the said Guy Biddinger was in my custody by virtue of a certain warrant issued by the Governor of the State of New York on June 2nd, 1916, a copy of which said warrant is hereto annexed and marked "Exhibit A," and made a part of this return, and the original whereof I now produce and exhibit to this Court.

The said Guy Biddinger was taken into custody by virtue of the aforesaid warrant on June 8th, 1916.

I herewith produce the body of the said Guy Biddinger before this Honorable Court, and I assign, as the cause of his imprisonment and detention the aforesaid warrant of the Governor.

Dated, New York, June 8, 1916.

LEON G. GODLEY,
Acting Police Commissioner of the City of New York.

7 *Executive Warrant in Support of Return to Writ.*

"EXHIBIT A," ANNEXED TO RETURN.

State of New York.

Executive Chamber.

The Governor of the State of New York to the Police Commissioner, New York City, and the Sheriffs, Under Sheriffs and other Officers of and in the several cities and counties of this State, authorized by subdivision 1 of Section 827 of the Code of Criminal Procedure, to execute this warrant:

It having been represented to me by the Governor of the State of Illinois that Guy Biddinger stands charged in that State with having

committed therein, in the County of Cook, the crimes of Bribery, Confidence Game and Voluntarily Permitting a Prisoner to Escape which the said Governor certifies to be crimes under the Laws of said State, and that the said Guy Biddinger has fled therefrom and taken refuge in the State of New York; and the said Governor of the State of Illinois having, pursuant to the Constitution and Laws of the United States, demanded of me that I cause the said Guy Biddinger to be arrested and delivered to Patrick J. Murphy who is duly authorized to receive him into his custody and convey him back to the said State of Illinois which said demand is accompanied by copies of indictments and other papers duly certified by the said Governor of the State of Illinois to be authentic and duly authenticated, and charging the said Guy Biddinger with having committed the said crimes and fled from said State, and taken refuge in the State of New York;

You are hereby required to arrest and secure the said Guy Biddinger wherever he may be found within this State and there-
8 after and after compliance with the requirements of Section 827 of the Code of Criminal Procedure to deliver him into the custody of the said Patrick J. Murphy to be taken back to the said State from which he fled, pursuant to the said requisition; and also to return this warrant and make return to the Executive Chamber, within thirty days from the date hereof, of all your proceedings had thereunder, and of all facts and circumstances relating thereto.

Given under my Hand and the Privy Seal of the State at the Capitol in the City of Albany this second day of June in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.] CHARLES S. WHITMAN.

By the Governor:
WM. A. ORR,
Secretary to the Governor.

9 *Traverse to the Return to Writ.*

District Court of the United States for the Southern District of New York.

In the Matter of the Application of GUY B. BIDDINGER for a Release from Imprisonment upon a Writ of Habeas Corpus.

The above named Guy B. Biddinger hereby traversing the return of the Police Commissioner to the Writ of Habeas Corpus, alleges and states:

First. That the imprisonment of your Petitioner is without jurisdiction, right or authority of law.

Second. That the Warrant of the Governor of the State of New York, annexed to the return herein as the cause of such imprisonment, is void and illegal and in violation of the Constitution and Acts of Congress for the following reasons:

(*a*) That the Petitioner, Guy B. Biddinger, does not stand charged with any crime in the State of Illinois.

(*b*) That the papers upon which said Warrant is based show that the petitioner is not charged with any crime under the laws of the State of New York before any competent tribunal or Judge of the State of Illinois.

(*c*) That there was no evidence submitted to the Governor
10 of the State of New York upon which his Warrant was issued that the said Guy B. Biddinger is a fugitive from justice.

(*d*) That the papers upon which said Governor's Warrant was issued and the testimony before the Governor prior to the issuance of this Warrant showed that the said Guy B. Biddinger is not a fugitive from justice.

(*e*) That the papers and evidence before the Governor showed affirmatively that this proceeding was not instituted in good faith.

(*f*) That the papers accompanying the demand for extradition of the said Guy B. Biddinger are not duly authenticated as required by law.

(*g*) That it appears upon the face of the papers and on the testimony taken before the Governor upon which said Warrant was issued, that no crime was committed by the said Guy B. Biddinger under the laws of the State of Illinois.

(*h*) That it affirmatively appears from the papers and from the evidence taken by the Governor upon which the Warrant was issued and on which the application for extradition is predicated that the crimes alleged to have been committed are alleged to have been commit-ed from seven and one-half years to twelve years ago, and that they are therefore barred by the Statute of Limitations of the State of Illinois, which applicable to felony is three years and to a misdemeanor eighteen months.

(*i*) That the evidence taken before the Governor and the
11 papers produced upon which the Warrant was issued, affirmatively showed that the said Guy B. Biddinger was a resident of the City of Chicago, and a resident of the State of Illinois, for a period of more than four years after the date of the crimes alleged to have been committed by the said Guy B. Biddinger.

(*j*) That the papers before the Governor and the evidence taken before him pursuant to which the Warrant was issued, affirmatively showed that the complainants in the State of Illinois against the said Guy B. Biddinger if their affidavits are true, are accomplices to the crime charged against the said Guy B. Biddinger, and that their testimony is the only testimony upon which extradition is sought and which would be insufficient to convict the said Guy B. Biddinger of any crime.

(*k*) Because the demand from the Governor of the State of Illinois was obtained by fraud and deception.

(*l*) That the requisition and papers before the Governor were insufficient to establish the commission on the part of the said Guy B. Biddinger of any crime or the fact that he is a fugitive from justice.

Third. That the Warrant of the Governor provides for the rendi-

tion of the said Guy B. Biddinger upon several charges for crimes instead of providing for such rendition merely upon one crime or charge.

Dated, New York, October 13th, 1916.

GUY B. BIDDINGER, *Petitioner.*

CHARLES H. GRIFFITHS,
HOUSE, GROSSMAN & VORHAUS,
Attorneys for Petitioner.

115 Broadway, Borough of Manhattan, New York City.

12 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Guy B. Biddinger being duly sworn, says: That he is the Petitioner above named; that he has read the foregoing Traverse and knows the contents thereof, and that the same is true, except as to the matters therein alleged upon information, and as to those matters deponent beleives the same to be true.

GUY B. BIDDINGER.

Subscribed and sworn to before me this 13th day of October, 1916.

MORRIS SCHNEIDER,
Commissioner of Deeds for the City of New York, Residing in Kings County.

Certificates filed in New York County No. 1042; Kings Co. No. 197; N. Y. Registers Co. 16189; Kings Co. Reg. No. 6244.
My Commission expires October 20, 1916.

13 *Testimony.*

UNITED STATES DISTRICT COURT,
Southern District of New York:

In the Matter of GUY B. BIDDINGER.

Before Hon. Augustus N. Hand, J.

New York, November 10, 1916,

4:30 p. m.

Appearances:

Isidor J. Kresel, Esq., Representing the State of Illinois.
Henry A. Berger, Esq., Assistant State's Attorney, Cook County, State of Illinois.
Irwin N. Walker, Esq., Assistant State's Attorney, Cook County, State of Illinois.
Robert S. Johnstone, Esq., Assistant District Attorney, New York County.

George F. Turner, Esq., Assistant District Attorney, New York County.
Lemuel Ely Quigg, Esq., Representing the State of West Virginia.
Charles Morgenroth, Esq., Representing Mr. Quigg.
House, Grossman & Vorhaus, Esqs., Representing Guy B. Biddinger.
Moses H. Grossman, Charles H. Griffiths, of Counsel.

14 Counsel for relator applied for an adjournment of the hearing for the purpose of taking the depositions of certain witnesses in West Virginia.

Counsel for the State of Illinois objected to an adjournment and stated that he had witnesses in Court whom he desired to examine, whereupon the following colloquy occurred:

The Court: Mr. Kresel, why can't you take their depositions?

Mr. Kresel: Take their depositions?

The Court: Yes. Do you want to examine them in open court?

Mr. Kresel: I certainly do, if your Honor please, and I want to examine them after their case is in. We come here, if Your Honor please, with the warrant of the Governor of the State as a prima facie case. It is for them to take the laboring oar, and I have these witnesses here to rebut any testimony that they might give on the question as to whether Biddinger was or was not in the jurisdiction at the time these crimes are alleged to have been committed. Your Honor has already stated that that is the crucial point in the case, and therefore, I have here these records from the Police Department and these witnesses to meet that point.

Not it seems to me, quite aside from the immateriality of these depositions from West Virginia, it certainly cannot affect the merits of the case whether they are put in today or whether we go on with the real issues of the case and have them put in, if they are relevant, at the proper time.

15 Mr. Morgenroth: I represent Mr. Quigg, who represents the State of West Virginia in this matter. Mr. Quigg *has* fully intended to be here today, but owing to illness, he had to go to Bermuda—he was to be back here several days ago. I received a telegram a couple of days ago telling me that he would sail on the 14th and would arrive in New York on the 16th. I know that he considers it of very greatest importance that he be here to represent the State of West Virginia in this proceeding.

The Court: I have set this down for a hearing and there has been ample notice. There are plenty of attorneys here that know about the situation, who in fact, seem to represent much the same interests as the State of West Virginia, and you may call your witnesses and go on. There is no objection to that, you can put in your depositions from West Virginia afterwards.

Mr. Grossman: Yes sir.

The Court: I am sorry to hear the thing myself in open Court. If there is anything to be gained by it, I will do it, if you won't be too long.

Mr. Grossman: I do not see a single thing to be gained by it, and

I think it is really an imposition on your Honor, who has been extremely kind and indulgent to us in this matter.

After hearing argument the Court announced that the proceeding would be adjourned to November 20th for final hearing and that in the meantime all evidence should be taken before a United States Commissioner.

16 The Court: This was set down for final hearing and I do not want any evidence to be offered at that time; you have got to offer your evidence in the meantime; you have got to submit it in the form of affidavits or take it before the Commissioner and have it ready by the 20th because then I am going on.

Mr. Morgenroth: If your Honor please, may I say a word?

The Court: Yes. I think this is an enormous mass of perfectly irrelevant matter from my point of view, as I look at it, and I made a careful investigation of the law. The only question in my opinion that is a legal question, that can bear on the legal questions, is whether he was in the jurisdiction at the time the crimes were committed, or alleged to have been committed. The other things I have permitted the introduction of for the purpose of enabling the parties at interest to make a record.

Mr. Grossman: Absolutely.

The Court: All evidence should be in at the time this hearing is had.

Mr. Grossman: May I make a suggestion to your Honor in the interest of the time, and then perhaps a great deal of necessary work may be avoided.

The Court: Yes.

Mr. Grossman: Your Honor stated, and I think I understand your attitude perfectly, that you support the contention of my adversary who represents, upon the record, the State of Illinois, to the

17 effect that the only material question in this case is one, and that is, was the relator, Biddinger, physically, corporeally present in the demanding State at the time of the commission of the alleged crime. Am I right your Honor?

The Court: Yes, that is correct.

Mr. Grossman: Now I can except and I do except to the ruling of the Court in such a way that I may present it for argument upon appeal.

The Court: Yes.

Mr. Grossman: Now that is all right. Now supposing your Honor I should state what I intend to prove and my friend objects to it, and your Honor excludes it, and I except; I am perfectly willing then, having preserved a record upon which to go up on appeal, and save a great deal of hearings, argument and testimony, and I will take it up as rapidly as I can. Is that satisfactory to your Honor.

The Court: Well, I want the case to be in shape so you won't be asking to take any evidence on the 20th.

Mr. Grossman: Yes, sir, I will do that. I offer to prove that it is provided by the Statute of Limitations of the State of Illinois that no indictment can be found for a felony after the expiration of three years from the commission of the offense, and no indictment can

be found for a misdemeanor after the expiration of eighteen months from the time of the offense; provided, however, that during that time the accused shall have usually and publicly resided within the State of Illinois.

Mr. Kresel: I have no objection to your reading in the Statute.

The Court: Of course we will take judicial notice of statutes.

Mr. Kresel: I certainly have no objection to his reading in the statutes.

18 Mr. Grossman: All right, sir: Now then, I offer to prove, by witnesses having personal knowledge of the fact, that the relator, Guy B. Biddinger, has been openly and publicly and usually a resident within the State of Illinois during all of the times mentioned in the indictments and for at least twelve years prior to and up to, contin-ously, August 15, 1914.

Mr. Kresel: I object on the ground it is incompetent, irrelevant and immaterial, on the ground that that is a matter of defense which must be heard in the courts of the demanding State and not in the court of this State or in the Federal Courts, upon such a writ of Habeas corpus, and on that proposition I call your Honor's attention to the case of United States vs. Reed, with which your Honor is no doubt familiar.

The Court: Yes. Your objection is sustained.

Mr. Grossman: All right, we except, and I assume that our exception is on the record as though the testimony had been actually offered and objected to after the witness had been sworn.

The Court: Yes.

Mr. Grossman: Now I offer to prove that during the period from 1900 up to and including January, 1914, the relator, Guy B. Biddinger, was employed successively as a patrolman, detective and detective-sergeant of the Police Department of the City of Chicago, State of Illinois, having been appointed some time in 1900, we will say (it may have been a year or two prior to that), and having served continuously as a member of the Police Department of the City of Chicago until January 25, 1914, when he submitted his resignation as a member of the police department, which resignation was accepted and went into effect on January 26, 1914.

That during all of that time he was subject to the call of such Police Department for service, and that during his furloughs

19 or temporary absence from Chicago in that period of time, he was absent on police duty with the knowledge and consent and approval of the Police Department of the City of Chicago, through its superior officer, subject to the call and recall of the head of the Police Department, and that whenever so recalled to Chicago by the Police Department, he did appear in Chicago, and that he openly and publicly appeared in that City during the years 1911, 1912, 1913, 1914 and 1915.

Mr. Kresel: I object to that proof upon the ground, and I want to urge it very seriously, that it is incompetent, irrelevant and immaterial; on the ground that, as bearing on the question of the statute of limitations, such a defense should be heard in the courts of the demanding State and not by this court.

The Court: I will sustain the objection.

Mr. Grossman We except, and it is understood, of course, that our exception is just as valid as though our witnesses had been called and sworn and the testimony had been actually offered to that effect.

Now I offer to prove that at the time of the appearance of Guy B. Biddinger, the relator, during his employment in the Police Department, in Chicago, Illinois, as aforesaid, the relator called upon his superior officers in the Police Department, and that they at all times knew where to find him and where to address him and where he was so that he could be recalled by them at any time.

Mr. Kresel: To that I raise the same objection as I previously raised.

The Court: The objection is sustained.

Mr. Grossman: Exception in the same way.

I offer to prove that the relator, Guy B. Biddinger did not leave the City of Chicago or the State of Illinois either in May, 1911, or at any other time with the intent or purpose to flee or escape
20 from any charge or indictment or prosecution for the crimes alleged in these indictments, or for any other crime whatever, and that his absences from Chicago and his leaving there were always on police and official business and for the purpose of detecting crime and apprehending prisoners.

Mr. Kresel: To that I object on the ground it is immaterial as to the intent with which the person charged with crime leaves the jurisdiction when the crime is committed.

The Court: Yes, your objection is sustained, I so held in my opinion.

Mr. Grossman: Exception in the same way.

We offer to prove that no evidence was offered either before the Grand Jury prior to the filing of these indictments or at any time; that no evidence was offered to the Governor of the State of Illinois; that no evidence was offered to the Governor of the State of New York to prove that the relator was not a resident of the City of Chicago or the State of Illinois; that no evidence was offered to show that he was not usually and publicly a resident of the State of Illinois during the period in the years 1911, 1912, 1913, and 1914; nor was any such evidence offered covering any other period of time, and no evidence was offered before any of these tribunals to show or attempt to show that Biddinger did not openly and publicly reside in the City of Chicago, State of Illinois, during the periods aforesaid; that no evidence was offered to show that he was not employed in the Police Department or was not subject to the call or recall of the Police Department, and no evidence was offered to show that he did not, when called upon by his superiors in the Police Department, respond to such call and present himself to the Police Department in the City of Chicago, Illinois. I offer that proof.

Mr. Kresel: I object to that proof on the ground that this
21 court cannot go behind the indictments and cannot inquire into what evidence was or was not adduced before the Grand Jury that found them; and as to the balance of the offer I object on

the ground that, inasmuch as it bears only on the question of the statute of limitations, that is a matter of defense and should be offered in the courts of the demanding State and not in this Court.

The Court: Your objections are all sustained.

Mr. Grossman: Exception in the same way.

We offer to prove that there was no evidence or proof offered before the Governor of the State of Illinois, or the Governor of the State of New York to the effect that the relator, Guy B. Biddinger, was or is a fugitive from justice from the State of Illinois.

Mr. Kresel: I will say, if your Honor please, insofar as any proof being offered or not being offered before the Governor of Illinois, that is immaterial.

I do not object, insofar as they may have any evidence to offer, that such proof was or was not offered before the Governor of the State of New York, upon whose warrant he is here arrested.

Mr. Grossman: Well, if there was no proof before the Governor that the relator Biddinger was and is a fugitive from justice, then we contend the executive warrant was illegally and improperly granted, because, in the absence of proof of fugitiveness, no executive warrant can lawfully issue.

Mr. Kresel: I haven't objected to it, that is just the point I make. I don't object to your offering any proof that you may have to show that no evidence was produced before Governor Whitman to indicate that this man was a fugitive from justice.

Mr. Grossman: I understand, then, that such proof may be offered.

The Court: Yes.

22 Mr. Grossman: We except to the ruling in regard to the other point.

The Court: In regard to the proof before the Governor of the State of Illinois.

Mr. Grossman: Yes, sir.

The Court: Very good.

Mr. Grossman: We offer to prove that there was no evidence or proof offered before the Governor of the State of Illinois to the effect that the relator Guy B. Biddinger was or is a fugitive from justice from the State of Illinois.

Mr. Kresel: To that offer I object upon the ground that that is immaterial.

The Court: Sustained.

Mr. Grossman: Exception.

Mr. Grossman: We offer to prove that the prosecutions and indictments in Illinois, for which the relator's extradition to that State has been directed by the warrant of the Governor of the State of New York, were instituted maliciously, without probable cause, in bad faith, and to serve private and personal ends, and not for the real or genuine purpose of trying Mr. Biddinger for any real crime that he is claimed or alleged to have committed.

Mr. Kresel: To that I object on the ground that it — immaterial and irrelevant what motives induced the prosecuting officials of the State of Illinois to institute the investigation.

The Court: That is sustained. I certainly cannot go behind the indictments and the Executive Warrant of a foreign state as to the motives for issuing it.

Mr. Grossman: Exception. Upon that point I just wish to say a word for the purposes of the record, because I consider it quite important not only for this case but for future cases which may arise.

I want to say to your Honor that while it is true that there
23 are certain cases which purport to hold that a Judge sitting as your Honor does, upon the hearing of a writ of habeas corpus, cannot go into the question of the good faith of the prosecution against the relator, I say to you and I say it with all the firmness and belief of which I am capable, that I consider it not only the right, but I consider it the duty, of this Court to go into that question; and I am going to make a very determined effort to have the rule laid down by the Circuit Court of Appeals or by the Supreme Court of the United States, that when a habeas corpus is issued, involving the liberty of a citizen, that a court is not bound by the mere technical proof of the filing of information before a Magistrate, or even the filing of an indictment by a Grand Jury, plus the presence of the Relator in the demanding State and his presence here and then say, "I must extradite, I must sustain an Executive warrant"; I am going to endeavor to have a ruling made, to have the doors of justice thrown wide open, so that when a court is convinced that there cannot be a conviction in any view of the situation and that is an idle ceremony to send a man from Maine to California on a mere charge of crime, which may be a misdemeanor, the highest penalty of which perhaps may be a fine of twenty-five dollars, that it is the court's right and the Court's duty to sustain such a writ of habeas corpus and let the relator go. In that connection I call your Honor's attention to the peculiar language of the statute.

The Court: You have argued that several times and I have read the statutes already.

Mr. Grossman: But we are having a record made now.

The Court: Well, put it briefly.

Mr. Grossman: I will put it briefly, yes, sir. It provides that in habeas corpus proceedings, after hearing argument and testimony, the Court or Judge (I quote now) "shall dispose of the re-
24 lator as law and justice require." It does not say that the Court or Judge shall dispose of him "in accordance with the law." The legislators seemed to have felt that if the strict letter of the law effectuates an injustice, it is no longer the duty of the Court to dispose of the prisoner in accordance with merely the forms of law, but that what is required is the performance, so far as the Court may, of equal justice between men or between a State and a man.

It is upon that theory that I believe evidence of bad faith, evidence of perjury in the procurement of the charge, supported by evidence that there is in fact an ulterior purpose behind the prosecution, would warrant a Judge in sustaining that writ, if, upon examination of the evidence, he feels that the man is innocent and cannot be convicted,

The Court: But you would have a preliminary trial as to the guilt or innocence of the accused in the State where he was found, irrespective of the finding of an indictment in the demanding State.

Mr. Grossman: Where have we a preliminary hearing?

The Court: That is what you would have here.

Mr. Grossman: Yes, sir.

The Court: I don't think there has ever been any such law as that.

Mr. Grossman: If your Honor pleases, the very statutes of the State of New York provide that when a man is apprehended as a fugitive from justice, that he is entitled to a hearing in a Magistrate's Court before a magistrate.

The Court: Yes, surely he is entitled to a hearing as to whether he is a fugitive from justice, provided the warrant and indictment are regular on their face.

Mr. Grossman: Let us look at the anomaly, if your Honor pleases. If a man commits a crime in our City, he is entitled, beyond question, before indictment, to a hearing before a Mag-
25 istrate here to the end that he shall not be indicted and have the stigma and infamy of a charge by a Grand Jury until he has had a preliminary hearing. Yet, merely because a charge is made in another State a citizen of New York is unfrocked of his citizenship and he is told that his rights are less because the charge is made in another State, whereas if that identical charge was made in our State, we would confer upon him greater rights.

Mr. Kresel: Won't you please tell the Court that he did have a preliminary hearing in this case in the Magistrates' Court?

Mr. Grossman: Where?

Mr. Kresel: Before Magistrate Nolan.

The Court: But you cannot try the case out practically here, the way you want to. He has that right to move to quash the indictments and to make all kinds of motions and interpose all kinds of pleas in Illinois, when he gets there.

Mr. Grossman: I have said to your Honor that my friend has cited a case, and there are cases purporting to hold that this question cannot be gone into by this Court. I say that there being contrary opinions by the Circuit Court of Appeals, as evidenced by Bruce vs. Raynor, 124 Fed. Rep., and Reid vs. U. S. 224 Fed. Rep., I say that there should be a final determination by the Supreme Court of the United States upon that question, and I conceive it my duty to carry this question up there because I can illustrate to your Honor how utterly unjust and iniquitous it is if the forms of law are complied with merely because a certain case holds it shall be done.

As an illustration, if a man is charged with a violation of the excise law in San Francisco, committed six years or ten years ago, that being a misdemeanor, the utmost penalty to be inflicted being a fine of fifty dollars, and an information is filed before a magis-
26 trate charging John Jones with a violation of the excise law, and an application for his extradition is made, it is signed in the usual course, and he issues a writ of habeas corpus. Now he comes before the United States District Court and he says, "I never owned

a saloon in my life; I was in San Francisco, California at that time, ten years ago; I lived there, but I was in the dry goods business. If you send me back, the worst possible punishment that can happen to me is that I will be fined fifty dollars. Now I would like to plead guilty to the indictment, although I am innocent, rather than make the trip out there, because I am at present employed at a salary (if you like) of a hundred thousand dollars a year, and I cannot afford to go back; and, besides I don't wish to be humiliated and taken back as a fugitive. Now I say to your Honor that I was there and there is a charge of crime; and yet, under this celebrated case to which Mr. Kresel refers, and under your Honor's ruling, there is no alternative but for your Honor to dismiss the writ.

Now he says, further, that the man who made that affidavit is an ex-convict; he is a man whom this John Jones had sent to prison and that the District Attorney is his friend and that the purpose of the entire proceeding is to humiliate, harass and annoy him. Now I do not say that your Honor's ruling is not right; the court of last resort may say it isn't right; I don't think it is, and I am going to try to have it changed, but under that rule your Honor would have no discretion, you would say to this relator, "I think you are innocent; I think the application for your extradition is made in bad faith; I think it is outrageous, but I am a Judge of the United States District Court and the law says that when there is a charge of crime and there is proof of your physical presence in the demanding State at the time of the commission of that crime, and proof of your presence
27 here, I have no alternative. If I were Governor I would not send you back but, as Judge, it is my duty, it is so stated in the law."

Now I say to your Honor that that presents a very anomalous position; I say to your Honor that when you took your oath it was upon the Holy Bible and not upon an encyclopædia of law; and when the statute says that you "dispose of the relator as law and justice require," that whatever in this case will aid you in getting at the justice of the cause, you have an absolute right to consider as, for example, proof of bad faith and proof of perjury, and proof of the spending of thousands upon thousands of dollars in order to get Mr. Biddinger back to Illinois, not for the purpose of trying him upon these charges, which are outlawed by the statute, but for the purpose of denying his presence to the State of West Virginia. I say that there presents itself a situation which is wicked and in-quitous and unjust, and, therefore, in my opinion, illegal and unlawful.

Now then, I have this motion to make, if your Honor please; I move for the sustaining of this writ upon the ground that the Executive warrant of extradition recites three separate and distinct charges of crime and, in my view of the law, an Executive warrant, in order to be lawful and proper, can be based only upon a single charge of crime; and while it was possible for my friend to have filed six
28 separate applications for warrants of extradition, I don't think it was proper to combine them all in one and have one Executive Warrant issued reciting all of them.

I make that motion for the purposes of the record.

Motion denied. Exception.

Mr. Kresel: Am I to understand that that completes the offers of proof of Mr. Grossman, and that the only thing that we shall take before the Commissioner is evidence as to what proof there was before Governor Whitman, which is the only one which your Honor said he might prove.

Mr. Grossman: My answer is that my friend is not going to limit me to any proof at all. I will get my proof in by the 20th; I will have it as succinct as possible, in view of the record I have made, so as to save time and effort, but I don't know what I have overlooked and I don't know what proof I may offer, but I shall offer all of my proof by the 20th so as to facilitate the closing of this case at the earliest possible moment.

Mr. Kresel: The only objection I had in making the inquiry was this, if your Honor please; you have before you the Governor's warrant and that is prima facie proof that this man is a fugitive from justice and, by the way, I want to offer in evidence——

Mr. Grossman: You can offer it before the Commissioner.

Mr. Kresel: I will offer it now, it will only take a minute. I don't propose to enter into an extended examination before the Commissioner and the putting in of all these records as to the presence or absence of this man on the days when the crimes are alleged to have been committed unless it is denied that he was there and then it is up to them to prove or to atte-pt to prove that he was not there and for me to meet that proof.

The Court: Yes, that is true.

Mr. Kresel: Now then, I am only asking this question if Mr. Grossman does intend to offer such proof and then, of course,
29 we know that we will have to meet that before the Commissioner.

Mr. Grossman: Mr. Kresel, you may assume that I will offer proof, so far as I can, of his absence from Illinois.

Mr. Kresel: On the days when the crimes are alleged to have been committed.

Mr. Grossman: So you may as well be prepared.

Mr. Kresel: Very well. May that be done tomorrow before the Commissioner.

Mr. Grossman: Oh, I will tell you. I will go before the Commissioner at ten o'clock with you tomorrow and I will help you in every way I can.

Mr. Kresel: May this warrant be marked. It is the original warrant and will it be conceded that that is the warrant upon which the arrest was made or shall I put the officer on?

Mr. Grossman: Let me look at the warrant. (The warrant referred to was received in evidence and marked Exhibit No. 1 for the State of Illinois.)

Mr. Kresel: Is it conceded that that is the warrant upon which the arrest was made?

Mr. Grossman: If it was—is it?

Mr. Kresel: Of course it was.

Mr. Grossman: It is conceded.

Mr. Kresel: Now I don't believe that the return was filed. I have here the original return and I desire to file it. Have you fi-ed your traverse?

Mr. Grossman: Yes. If it was not filed, for any reason, you can file this.

The Court: And this testimony has been taken under that traverse?

30 Mr. Griffiths: We would like to offer each and every bit of the testimony that we have offered here to-day, or that we said we would offer, separately, and have a ruling go to the rejection of each and every point that was offered.

For instance Mr. Grossman stated a number of things at once, that he would offer to the Court, and the objection was made and the ruling of the Court had to it all in bulk. I should like to have it offered separately so that each bit of testimony is offered separately, and the exception taken to it separately, and the ruling applied to it separately.

The Court: It may be so taken.

31 Mr. Kresel: I offer in evidence, if your Honor pleases, the original papers that were before Governor Whitman upon which this Executive Warrant was granted, which original papers consist of the requisition of Governor Dunne of the State of Illinois, to which are attached exemplified copies of the six indictments upon which the requisition is based. I think Mr. Grossman has copies of the indictments and also a copy of the requisition.

Mr. Grossman: All right.

Mr. Kresel: May that be marked and may we supply copies to your Honor instead of leaving the originals?

The Court: Yes.

(Papers referred to were received in evidence and marked Exhibit No. 2 for the State of Illinois.)

Mr. Kresel: That leaves us, if your honor please, only in the position with reference to the depositions from West Virginia. Your Honor knows, and Mr. Grossman will of course state it to your Honor, that those depositions are with reference to the prosecution in West Virginia, which your Honor has already held are immaterial, inadmissible, and would so hold. Would not Mr. Grossman in order to facilitate the hearing, make this offer of such testimony as he has made, with reference to the Chicago testimony, and have a ruling? That would obviate doing that on the 20th.

Mr. Grossman: In view of the fact Mr. Quigg represents

32 West Virginia, I don't like to do it; I have some delicacy about it, otherwise I would be glad to do it.

Mr. Morgenroth: If your Honor please, may I say that in view of the fact that Mr. Quigg is detained, through unavoidable illness, and that the State of West Virginia desires to intervene in this matter, that opportunity be given Mr. Quigg to appear in this proceeding upon his return and to offer such testimony as he may think proper on behalf of the State of West Virginia. I know that the State of West Virginia is very anxious to intervene in this proceeding.

The Court: The State of West Virginia has had a great deal of time. They are not proper parties to this proceeding at all and I will not grant any such privilege as that. If there is a desire on the part of the State of West Virginia to have testimony offered, it can be offered, as was proposed by the counsel for Mr. Biddinger, who can take the deposition of the officials there, which I believe he is proposing to do. Isn't that so?

Mr. Grossman: Yes, sir.

The Court: That will cover the ground but I will not extend this matter when the State of West Virginia comes in at this late day and is not a proper party anyway for the purpose of taking separate testimony by separate counsel, for the State of West Virginia.

Mr. Morgenroth: May Mr. Quigg appear then, at any time before the 20th, and offer such testimony, or on the 20th, and offer such testimony as he may have?

Mr. Kresel: I say now that I shall object to Mr. Quigg's appearance or to the appearance of any other person on behalf of the State of West Virginia in this proceeding. The State of West Virginia is not a proper party to this proceeding and has no standing in this Court.

The Court: Yes it is not a proper party in any sense of
33 the word.

Mr. Morgenroth: May I have an exception to that, if your Honor please.

The Court: You may. If Mr. Quigg, because of the interest of the State of West Virginia, wishes to appear at the final hearing and make an argument, on the 20th, he may do so; I will hear him but I shall merely hear him as a counsel, associated with Mr. Grossman, if Mr. Grossman wishes to associate with him in that matter, he appearing for Mr. Biddinger, but I shall not separately hear the State of West Virginia because it has no possible standing.

Mr. Grossman: He may appear as amicus curiæ, as a friend of the Court.

The Court: Yes, but I shall allow no separate appearance for the State of West Virginia because it only muddles the whole thing.

Mr. Kresel: Mr. Waldron, from the Governor's office, has also produced, in pursuance to our subpœna, the original minutes of the testimony taken before the Governor. I don't want to offer that now, because it is not material at the present time; I simply want to ask Mr. Grossman whether he has a copy of the testimony—we may use the copy when the time comes for its use or keep the original.

Mr. Grossman: You may offer it and I will offer no objection at all; I want his Honor to have all the facts before him.

Mr. Kresel: I shall offer it before the Commissioner at the proper time, when my turn comes. I will keep the original.

Mr. Grossman: You can offer it now or before the Commissioner. I tell you I am perfectly willing to have the record before the Governor offered in evidence and accept it.

Mr. Kresel: All right, we will do that before the Commissioner tomorrow morning at 10 o'clock.

34 Mr. Grossman: You haven't offered in evidence, Mr. Kresel—perhaps you overlooked it, and if you have I want to remind you of it—the papers upon the original application for the extradition of Mr. Biddinger. I shall object to the offer when made.

Mr. Kresel: You mean the first application?

Mr. Grossman: Yes.

Mr. Kresel: I don't intend to offer them.

Mr. Grossman: You will remember that the Governor stated he had considered, at your request, the papers upon the first application.

Mr. Kresel: Let me correct you, because you don't want to state anything which isn't the fact. All the Governor stated that he had considered at my request was that in granting this application, he acted on the testimony taken before him at the first hearing.

Mr. Grossman: In view of Mr. Kresel's attitude, I now move for the legal sustaining of the writ on the ground that in the second application for extradition there is absolutely no evidence that the defendant, the relator, was physically corporeally present in the demanding State at the time of the commission of the alleged crime, and that the only evidence attempted to be given is contained in a petition signed Maclay Hoyne, District Attorney, in which he says that, "On or about the 10th day of May, 1911, the said Guy B. Biddinger fled from the State of Illinois and is now, as your petitioner verily believes, in the County of New York, State of New York, a fugitive from the justice of this State, and the grounds of such belief are as follows: Informations communicated to this petitioner by the authorities in the said County of New York, State of New York." And that statement embodied in the statement of the District Attorney is supported only by an affidavit of one Shelby M. Singleton, who says:

"I, Shelby M. Singleton, first being duly sworn, do
35 solemnly declare that the facts set forth in the foregoing petition are true and that a requisition for the above named fugitive is not sought for the purpose of collecting a debt; to allow any person to travel at the expense of the State or to answer any private end whatever and shall not be used for any of said objects."

I want to say to your Honor that among the depositions taken in Chicago we examined Singleton, and his evidence was, as I recall it now (and if I am wrong, Mr. Kresel, who is present, will correct me) that he doesn't know Biddinger, that the first time he saw him was at the hearing in Albany, and yet you have the evidence of such a man who has no personal knowledge of the facts at all, swearing that Biddinger fled from the State of Illinois.

Mr. Kresel: I desire to state for the record that before Governor Whitman there was other evidence as to Biddinger's presence in the State of Illinois, upon the dates alleged in the indictment, and that that evidence consisted of evidence given by Biddinger himself before the Governor.

Motion denied. Exception.

Mr. Grossman: I simply make this statement in fairness to my

friend because I am surprised at his failure to offer what I would, as I say, object to, and that is the original papers which did contain or attempted to contain, some evidence upon the question of the fugitiveness, and I am going to press my objection that, upon these papers there is absolutely no evidence which can, from any view of the law, sustain the Executive warrant.

Mr. Kresel: May it please your Honor, I understood from Mr. Grossman that he was going to offer proof to show that there was no evidence before Governor Whitman upon which this warrant was granted that Biddinger was in the demanding state at the time that the crimes were alleged to have been committed, and when
36 he made that offer I stated that I had no objection. When before the Commissioner he makes proof that there was no such evidence before the Governor I shall be ready to meet that proof; at the present time it isn't necessary and I don't offer it.

Mr. Grossman: But I don't wish to mislead my friend.

Mr. Kresel: You are not misleading me.

Mr. Grossman: I don't want to mislead my friend to the effect that I have bound myself in any way to submit my proof. I will submit proof that I think is necessary for my client.

Mr. Kresel: That was the offer.

Mr. Grossman: Yes, sir, it was, but I say now that if, in my judgment the record presents a situation from which, upon a legal aspect of it, it becomes unnecessary for me to offer proof, I don't propose to bind myself to offer it. Now I have warned my friend as to my contention.

The Court: I don't suppose he wants you to offer any proof.

Mr. Kresel: I will take care of my end of it, Mr. Grossman.

Mr. Grossman: That is all, I simply wanted to make that statement.

The Court: That matter which Mr. Grossman read, is that in the record, I mean the affidavit which was read?

Mr. Kresel: Which one, if it please your Honor. Mr. Grossman read two of them.

Mr. Grossman: They are both in this record.

Mr. Kresel: I don't know what he read from.

Mr. Grossman: I read from my copy.

Mr. Kresel: Of the present application?

Mr. Grossman: Yes, sir.

Mr. Kresel: If he has read it from that it is there; that is
37 sufficient.

Mr. Grossman: Now in order to understand it, as I understand the status of the matter, each side is to go before the Commissioner and present whatever proof he has to offer upon notice to the other.

Mr. Kresel: Don't let's have any notice, because that will only delay the matter. As I understand it (and if I am not correct the Court will rule to the contrary), we are to appear before the Commissioner tomorrow and, in the regular course, Mr. Grossman is to make his proof upon the question of Biddinger's presence or absence from the State at the time the crimes are alleged to have been com-

mitted; when he is through, if I have any proof to offer to the contrary, I shall offer it. That is my understanding.

The Court: Yes, proceed from day to day.

Mr. Kresel: Yes, sir, I shall be ready to go on from day to day.

Mr. Grossman: But I shall not call Mr. Biddinger tomorrow, if your Honor pleases. From my view of the matter, it is not for me, upon this hearing, to call my client; it is for them to show his physical presence in the demanding State at the time of the commission of these alleged offenses. I issue my writ and I allege the grounds upon which I seek the discharge of my client in the petition.

The Court: And among others you allege that he was not within the demanding State, I suppose.

Mr. Grossman: No, I don't think so, sir. The grounds of my petition are, first——

Mr. Kresel: Just answer that one question.

Mr. Grossman: I am going to answer it by reading the grounds stated in my petition.

Mr. Kresel: May I draw your Honor's attention to the very paragraph?

The Court: Yes.

38 Mr. Kresel: It is paragraph marked G, "that the said Guy B. Biddinger was not and is not a fugituve from justice from the State of Illinois, and did not flee from the State of Illinois for and purpose——

Mr. Grossman: I beg your pardon, the statement that a man is not a fugitive from justice does not involve——

Mr. Kresel: Let us have it understood, w-ither you deny that he was there or you don't deny it.

Mr. Grossman: My friend went out to Chicago, Illinois, and he told the United States Commissioner that the only evidence I proposed to introduce there was evidence that the statute of limitations had run. Now I never made any such statement.

Mr. Kresel: What has that got to do with it?

Mr. Grossman: It has this to do with it; He now says that my statement contained in the petition for a habeas corpus, that the defendant Guy Biddinger is not a fugitive from justice means that he was not physically corporeally present in the State at the time of the commission of these offenses, and I say it means nothing of the kind.

Mr. Kresel: May we not have a specific statement from Mr. Grossman as to whether he claims he was not there or whether he was there?

Mr. Grossman: I will tell you, Mr. Kresel.

Mr. Kresel: Yes, please. We have been trying to get that from you for some time.

Mr. Grossman: I will tell you the truth about it.

Mr. Kresel: Well, tell us. Was he or was he not in the City of Chicago upon the dates alleged in the six indictments. What is your answer?

Mr. Grossman: I will tell your Honor our answer to that question. when we examine these books and papers tomorrow, I will be able

to tell, as Mr. Kresel will be able to tell, whether he was present or absent, because, remembering that these charges are six, eight and ten years old, how can he, a police officer, tell now where he was on police duty at those times, but these books tell.

Mr. Kresel: The records are here, and they are open for Mr. Grossman's inspection.

Mr. Grossman: Thank you, and I will look at them tomorrow.

The Court: It is for you to establish that, you have the burden of establishing that.

Mr. Kresel: That he was not there.

The Court: That he was not there at the time.

Mr. Grossman: Now then may I except to your Honor's ruling, that the burden is upon us to prove the absence physically and corporeally of the relator at the time of the commission of the alleged crimes in the demanding state, and I ask your Honor to rule that, upon this habeas corpus, it is the duty of the respondent to offer proof of the physical corporeal presence of the relator Biddinger in the demanding State at the times mentioned in the indictments as the date of the commission of the alleged crime. I ask your Honor to rule that the burden is on them.

The Court: I hold against you and give you an exception.

Mr. Grossman: We except.

The Court: Now you go on before the Commissioner tomorrow morning, and the evidence must be in the 20th at half past four in this room.

"The hearing before the Court was then adjourned to November 20th, 1916."

"The parties met before United States Commissioner Clarence S. Houghton on November 11, 1916, and the following appearances were noted:"

Isidor J. Kresel, Esq., Representing the State of Illinois.

Henry A. Berger, Esq., Assistant State Attorney, Cook County, State of Illinois.

House, Grossman & Vorhaus, Esqs., Representing Guy B. Biddinger.

Moses H. Grossman, Charles H. Griffiths, of Counsel.

JOHN A. WALDRON, called as a witness, being first duly sworn, testified, in substance, as follows:

Direct examination.

By Mr. Grossman:

The Witness: I am Requisition Clerk in the Executive Department of the State of New York in Albany, and am familiar with the extradition proceedings in the case of Guy B. Biddinger. An application was first made for his extradition to the Governor of New York, which was granted on April 15, 1916. The requisition of Governor E. F. Dunne of Illinois, bears date April 14, 1916, and

the warrant of the Governor of New York bears date April 14, 1916. These papers were filed with me as Requisition Clerk.

I produce from the files of the Executive Department 3 folders, each containing the requisition and accompanying papers for the extradition of Guy B. Biddinger upon three separate charges of crime, to wit: One folder, containing a requisition and accompanying papers upon a charge of bribery; a second folder, containing a requisition and accompanying papers upon a charge of permitting a prisoner to escape, and a third folder, containing a requisition and accompanying papers upon a charge of Larceny.

Mr. Grossman: I offer in evidence from folder marked No. 1, the following papers, to wit: The petition of Maclay Hoyne, together with the affidavit of Shelby M. Singleton, sworn to April 13, 1916; the affidavit of Ike Kline sworn to April 12, 1916, before Jacob H. Hopkins, Judge of the Municipal Court of Chicago.

I offer a paper described "Affidavit in support of application for extradition," made by Ike Kline on April 12, 1916.

Mr. Grossman: To save time I will offer all of these that I want to offer and you can make your objection if you have any objection to make.

Mr. Kresel: I shall have no objection except that I shall
42 offer all the rest. I tell you that now. Go ahead and offer all you want and I will offer all the rest.

The Commissioner: Then they may be marked.

Mr. Kresel: I now offer in evidence the following papers contained in folder No. 1, to wit:

Affidavit of James M. Markham, verified April 13, 1916;

Affidavit of Frank T. Hill, verified April 13, 1916;

Affidavit of Patrick J. Cooney, verified April 13, 1916;

Affidavit of John R. Herren, verified April 13, 1916.

Mr. Grossman: I object to the introduction of the papers offered by Mr. Kresel upon the ground that they are irrelevant, incompetent and immaterial.

Mr. Grossman: I offer in evidence from folder marked No. 2, the requisition of Governor Dunne of Illinois, dated April 13, 1916, the petition of Maclay Hoyne, the affidavit of Shelby M. Singleton, sworn to April 13, 1916 and the two affidavits of Christian P. Bertsche, sworn to April 13, 1916.

Mr. Kresel: There is no objection to the offer of these documents and I now offer in evidence the following documents, which are also part of folder No. 2, to wit:

Warrant dated April 13, 1916 issued by Judge Jacob H. Hopkins Judge of the Municipal Court of Chicago, for the arrest of Guy B. Biddinger on the charge of bribery, together with a certificate of the Clerk of the Court to the effect that the warrant is a correct copy also another affidavit by Christian P. Bertsche, verified April 12, 1916 and affidavits of Frank T. Hill, James M. Markham, Patrick J. Cooney and John R. Herren, all verified April 13, 1916.

Mr. Grossman: And to all of which we object on the ground that they are incompetent, irrelevant and immaterial.

Mr. Grossman: I now offer in evidence the following papers contained in folder marked No. 3 to wit:

The requisition of Governor Dunne of Illinois, dated April
43 14, 1916;

The petition of Maclay Hoyne, and the affidavit of Shelby M. Singleton, sworn to April 13th, 1916;

Three affidavits of Benjamin Leeman, sworn to April 12, 1916, and the affidavits of Christian P. Bertsche, Ike Kline and Shelby M. Singleton, all verified April 12, 1916.

Mr. Kresel: To these I have no objection and I now offer in evidence the following papers, likewise contained in folder No. 3, to wit:

Copy of warrant for the arrest of Biddinger upon a charge of larceny and affidavits of Benjamin Leeman, verified April 12, 1916; and of Markam, Hill, Cooney, Herren and Stephen P. Crisiestske, verified April 13, 1916.

Witness: In addition to the foregoing there are also contained in folder No. 3, 48 affidavits made by Shelby M. Singleton and verified April 12, 1916 each of which affidavits was in form like the affidavit marked Exhibit XXXII each purporting to charge a separate crime. All of the papers contained in the three folders are the original papers that were filed with Governor Whitman, and upon which was issued the first warrant of extradition, dated April 15, 1916. This warrant of extradition was revoked by Governor Whitman on May 1st, 1916. Between April 15, 1916, and May 1st, 1916, there was a hearing held before Governor Whitman upon an application to revoke the warrant. At that hearing there were introduced, on behalf of Biddinger, and filed with the Governor, affidavits which I now produce.

Mr. Grossman: I offer in evidence the affidavits of Verda S. Biddinger, sworn to April 24, 1916 (marked Exhibit 4).

Also the affidavit of Virgilia Biddinger, sworn to April 26, 1916 (marked Exhibit 5);

Also the affidavit of Claude Biddinger, sworn to April
44 22nd, 1916 (marked Exhibit 6).

Also the affidavit of Lucy F. Biddinger, sworn to April 24, 1916 (marked Exhibit 7);

Also the affidavit of M. W. Grosse, sworn to April 26, 1916 (marked Exhibit 8);

Also the affidavit of Martin W. Grosse, sworn to April 25th, 1916 (marked Exhibit 9);

Also the affidavit of M. W. Grosse, sworn to April 25, 1916 (marked Exhibit 10);

Mr. Kresel: Is that all?

Mr. Grossman: That is all. No. The affidavit of Robert E. Cantweil, sworn to April 24, 1916 (marked Exhibit 11).

The affidavit of William W. Quinn, sworn to April 24, 1916, (marked Exhibit 12).

Also the affidavit of William W. Quinn, sworn to April 24, 1916 (marked Exhibit 13).

Mr. Kresel: I object to these affidavits upon the ground that they are irrelevant, incompetent and immaterial.

The Witness: I produce a letter written by Governor Dunne to Governor Whitman, dated April 15, 1916, withdrawing his requisition.

On May first Governor Whitman made an order vacating his warrant of extradition.

Mr. Grossman: I offer in evidence Governor Dunne's letter withdrawing his requisition and Governor Whitman's order revoking his warrant.

Mr. Kresel: To these I object upon the ground that they are incompetent, irrelevant and immaterial.

The Witness: After the revocation of the warrant for Biddinger's extradition on May 1st, 1916, the Governor of the State of Illinois, on June 2, 1916, made a second requisition for Biddinger's extradition, and on that date Governor Whitman issued a new warrant.

45 "Further proceedings before the Commissioner were adjourned to November 15, 1916."

New York, November 15, 1916.

"Hearing resumed before Commissioner Houghton.

Appearances:"

Isidor J. Kresel, Esq., Representing the State of Illinois.

House, Grossman & Vorhaus, Esqs., Representing Guy B. Biddinger.

Moses H. Grossman, Charles H. Griffiths of Counsel.

JOHN A. WALDRON, resumed the stand.

Direct examination continued.

By Mr. Grossman:

Q. Mr. Waldron, have you brought with you today the letters and telegrams on file in the office of the Governor of the State of New York in the matter of the extradition of Guy B. Biddinger.

A. Yes, sir.

Q. I show you a telegram dated Charleston, West Virginia, April 18th, 1916, signed Henry D. Hatfield, Governor of West Virginia, addressed to Governor Charles S. Whitman, and ask you if that is a telegram received by Governor Whitman in this matter and on file as part of this extradition proceeding?

A. It is, yes, sir.

Q. Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is incompetent, irrelevant and immaterial.

Mr. Grossman: Mark*ed* it for identification, please. (Marked Exhibit 14 for identification).

46 Q. You have also handed me a telegram signed Henry D. Hatfield, addressed to Honorable Charles S. Whitman, Governor of New York, dated Charleston, West Virginia, April 25, 1916, stamped "Received April 26, 1916, Executive Chamber", and I ask you whether that is also one of the papers on file with the Governor in Albany in this extradition case?

A. Yes, sir.

Q. Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it upon the ground it is incompetent, irrelevant and immaterial.

The Commissioner: You had better have it marked Exhibit 15 for identification.

(Marked Exhibit 15 for identification.)

Q. You have also handed me a telegram dated Springfield, Illinois, dated April 25, 1916, stamped, "Received April 25, 1916, Executive Chamber"; it is addressed to Honorable Charles S. Whitman, Governor of New York, signed E. F. Dunne, Governor of Illinois, and I ask you if that is a telegram received by Governor Whitman and on file with the papers in this extradition case?

A. It is.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is incompetent, irrelevant and immaterial.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 16 for identification.)

Q. Attached to this last exhibit is a copy of the telegram sent by Governor Whitman to Governor Dunne, dated April 25, 1916, and I ask you whether that is a correct copy of the telegram so sent?

A. Yes, sir, it is.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is incompetent,

47 irrelevant and immaterial.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 17 for identification.)

Q. You have also handed me a letter on stationery entitled, "State of Illinois, Executive Department, Springfield, Edward F. Dunne, Governor," dated April 28th, 1916, addressed to Governor Whitman by Governor E. F. Dunne, recalling the requisition for Biddinger's extradition theretofore issued, and I ask you whether that letter was received by Governor Whitman and is part of the files in this case in Albany?

A. It was received, yes, sir.

Q. And it is part of the files?

A. Yes, sir.

Mr. Grossman: I offer it in evidence.
Mr. Kresel: No objection.
(Marked Exhibit 18.)

Q. Attached to this last document marked Exhibit 18 is a copy of a letter dated May 1, 1916, addressed to Governor Dunne by Governor Whitman, acknowledging the receipt of Governor Dunne's letter and stating that Governor Whitman has revoked the warrant of extradition issued by him on April 15, 1916; I ask you whether that is a correct copy of the letter sent by Governor Whitman to Governor Dunne?
A. Yes, sir.

Mr. Grossman: I offer it in evidence.
Mr. Kresel: No objection.
(Marked Exhibit 19.)

Q. You have handed me a telegram dated Charleston, West Virginia, June 21, 1916, stamped, "Received June 22, 1916, Executive Chamber," addressed to Governor Whitman of New York by
48 Governor Hatfield of West Virginia; I ask you whether that was received by Governor Whitman and constitutes a part of the files in this extradition case?
A. It was.

Mr. Grossman: I offer it in evidence.
Mr. Kressel: I object to it on the ground it is immaterial, incompetent and irrelevant.
Mr. Grossman: I ask that it be marked for identification.
(Marked Exhibit 20 for identification.)

Q. You have handed me a telegram dated Charleston, West Virginia, July 1, 1916, addressed to Governor Whitman, signed Henry D. Hatfield; I ask you whether that was received by Governor Whitman and is a part of the papers on file in the Executive Chamber in this extradition case?
A. It is, yes.

Mr. Grossman: I offer it in evidence.
Mr. Kresel: I object to it on the ground it is immaterial, incompetent and irrelevant.
Mr. Grossman: I ask that it be marked for identification.
(Marked Exhibit 21 for identification.)

Q. I show you a letter bearing the inscription at its head, "State of West Virginia, Executive Department, Charleston," dated July 5th, 1916, stamped, "Received July 7, 1916, Executive Chamber," addressed "To His Excellency, Governor Charles S. Whitman," signed "H. D. Hatfield, Governor"; was this letter received by Governor Whitman and is it a part of the papers on file in this extradition proceeding against Biddinger?
A. It is.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: That I object to on the ground it is immaterial, incompetent and irrelevant.

Mr. Grossman: I ask that it be marked for identi-
49 fication.

(Marked Exhibit 22 for identification.)

Q. I show you what purports to be the carbon copy of reply to the letter sent to Governor Hatfield by Governor Whitman, marked Exhibit 22 for identification, which carbon copy in reply bears date July 7, 1916, and I ask you whether that is a true copy of the letter sent in reply to Governor Hatfield's letter.

A. It is.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is immaterial, incompetent and irrelevant.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 23 for identification.)

Q. You have handed me five affidavits, one by Robert E. Cantwell, sworn to August 28th, 1916; one by Thomas C. Smith, sworn to July 13th, 1916; one by Timothy T. O'Brien, sworn to July 14th, 1916; one by Joseph P. Johnson, sworn to July 13, 1916; one by William J. Kealey, sworn to July 14th, 1916.

I ask you whether these five affidavits are the affidavits submitted to Governor Whitman, and are on file as part of the extradition papers in this proceeding?

A. Yes, sir, they were.

Mr. Grossman: I offer them in evidence.

Mr. Kresel: To those and to each of them I object on the ground that they are irrelevant, incompetent, and immaterial.

Mr. Grossman: And it may be stated that these affidavits were separately offered and separately objected to?

Mr. Kresel: Yes.

Mr. Grossman: I ask that they be marked for identifi-
50 cation.

(Marked Exhibit- Nos. 24, 25, 26, 27 and 28 for identification.)

Q. You have handed me copy of paper bearing the heading, "State of New York, Executive Chamber, Albany," dated May 1, 1916, signed Charles S. Whitman, and attested by William A. Orr, Secretary to the Governor, purporting to be an order of Governor Whitman, "That the warrant for the arrest and rendition of said Biddinger be and the same hereby is revoked and vacated." I ask you whether that is a true copy of the original?

A. Yes, it is.

Q. On file in Albany with the Governor?

A. Yes, sir.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: That went in last week.

Mr. Grossman: Mr. Kresel states that that went in; that being so, it is not necessary to offer it again.

Q. You have handed me a copy of a telegram dated May 1, 1916, addressed to Mr. Moses H. Grossman, signed John A. Waldron, Requisition Clerk, and another telegram dated May 1, 1916, addressed to Hon. Nathan Bijur, signed Charles S. Whitman, and I ask you whether those are true copies of telegrams sent by or under the direction of Governor Whitman?

A. Yes, sir.

Q. And are on file with the papers in this extradition proceeding in Albany?

A. Yes, sir.

Mr. Grossman: I offer them in evidence.

Mr. Kresel: I object to them on the ground that they are, and each of them is, incompetent, irrelevant and immaterial.

Mr. Grossman: I ask that they be marked for identification.

(Marked Exhibits 29 and 30 for identification.)

Q. You have handed me an original letter dated June 24th,
51 1916, addressed to Hon. O. L. Potter, Executive Chamber, Albany, New York, signed Moses H. Grossman, and I ask you whether this is one of the papers on file in this extradition proceeding of Guy B. Biddinger in Albany with the Governor and whether it was received by him?

A. Yes, sir, it was.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: To that I object on the ground it is incompetent, irrelevant, and immaterial.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 31 for identification.)

Q. You have handed me the original of the letter bearing date June 27th, 1916, entitled "In re Guy B. Biddinger, alleged fugitive from the State of Illinois," stamped, "June 28th, 1916," addressed to Hon. Charles S. Whitman, signed Moses H. Grossman, together with a carbon copy of a letter bearing date June 29th, 1916, acknowledging its receipt. I ask you whether this letter of June 27th, 1916, was received by Governor Whitman and constitutes a part of the papers on file in this case in Albany, and whether the carbon copy of the letter dated June 29th was sent by the Governor under his direction, and are a part of the papers on file in Albany in this case?

A. Yes, sir.

Mr. Grossman: I offer them in evidence.

Mr. Kresel: To those and toeach of them I object on the ground they are incompetent, irrelevant and immaterial.

Mr. Grossman: I ask that they be marked for identification.

(Marked Exhibits Nos. 32 and 33 for identification.

Q. You have handed me a telegram dated Chicago, Illinois, June 28th, 1916, addressed to Governor Whitman, signed by

52 Robert E. Cantwell, attorney for Biddinger, stamped, "Received June 28, 1916, Executive Chamber." I ask you whether that was received by Governor Whitman and whether it constitutes a part of the papers on file in Albany in this case?

A. Yes, sir.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to that on the ground it is irrelevant, incompetent and immaterial.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 34 for identification.)

Q. The same question with reference to a telegram dated New York, June 28th, 1916, addressed to Governor Whitman, and signed Moses H. Grossman, and stamped, "Received June 28, 1916, Executive Chamber"?

A. That is correct.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to this, on the ground it is immaterial, incompetent and irrelevant.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 35 for identification.)

Q. The same question with reference to a telegram addressed to O. L. Potter, Executive Chamber, Albany, New York, dated June 28, 1916, signed Moses H. Grossman?

A. Yes, sir.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is immaterial, incompetent and irrelevant.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 36 for identification.)

Q. The same question with reference to a telegram dated Charleston, West Virginia, June 28, addressed to Governor Whit-
53 man, signed Henry D. Hatfield, Governor of West Virginia?

A. Yes, sir.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is immaterial, incompetent and irrelevant.

Mr. Grossman: I ask that it be marked for identification.

(Marked Exhibit 37 for identification.)

Q. I will ask you the same question with reference to a letter dated June 30th, 1916, addressed to Governor Whitman, by Moses H. Grossman?

A. Yes, sir.

Mr. Grossman: I offer it in evidence.

Mr. Kresel: I object to it on the ground it is incompetent and irrelevant.

Mr. Grossman: I ask that it be marked for identification.
(Marked Exhibit 38 for identification.)

Q. The same question with reference to a letter addressed to O. L. Potter, Executive Chamber, Albany, New York, dated July 3rd, 1916, signed Moses H. Grossman?
A. Yes, sir.

Mr. Grossman: I offer it in evidence.
Mr. Kresel: I object to it on the ground it is incompetent, irrelevant and immaterial.
Mr. Grossman: I ask that it be marked for identification.
(Marked Exhibit 39 for identification.)
Mr. Grossman: That is all.

Cross-examination.

By Mr. Kresel:

Q. Mr. Waldron, have you here the original transcript of the minutes of the testimony taken by Governor Whitman in these two extradition proceedings?
54 A. Yes, I think I have.
Q. Will you produce these please—you have handed me a file of typewritten sheets numbered from page 1 to 41, and 1 to 62 respectively; are these the minutes of the testimony taken before Governor Whitman in the Executive Chamber at Albany, New York on the 26th of April, 1916, in the matter of the application of the Governor of the State of Illinois for the extradition of Guy B. Biddinger, an alleged fugitive from that State?
A. Yes, sir.
Q. You have also handed me certain minutes of a hearing entitled "Before the Governor, Executive Chamber, Albany, New York, September 9th, 1916, in the matter of the application for a revocation of the warrant of the Governor of New York in proceedings for the extradition of Guy Biddinger as an alleged fugitive from justice of the State of Illinois," which extends from pages 1 to 36 inclusive. Did you produce those minutes from the files of the Governor's office at Albany?
A. Yes, sir.
Q. And is that the transcript of the proceedings before the Governor on that date in this matter?
A. Yes, sir.

Mr. Kresel: That is all.
Mr. Grossman: Do you offer them in evidence?
Mr. Kresel: I do not. I just want the record to show that it is here for you to offer.

Redirect examination.

By Mr. Grossman:

Q. Mr. Waldron, you have here some other records of the hearing before the Governor in this matter which you have not identified, at the request of Mr. Kresel, have you not?

A. Yes, sir.

Q. For example, attached to and constituting a part of the
55 papers referred to by Mr. Kresel, is a record of the hearing on September 9th, 1916, from pages 1 to 36 inclusive; a record of the hearing before Governor Dunne of Illinois consisting of 97 pages; is that right?

Mr. Kresel: How can he say whether or not it is the record before the Governor of Illinois? He can say that there are some papers there, that is all he can say.

Mr. Grossman: He can say exactly what it is.

Mr. Kresel: I will show that he cannot after you get through.

Q. Just look at them?

A. It is offered in evidence here by Mr. Grossman as being a record of the proceeding before Governor Dunne of Illinois.

Q. It was accepted as such?

A. Yes, sir.

Mr. Kresel: Where does it say it was accepted?

Mr. Grossman: Well, it was accepted as such.

Mr. Kresel: Are you testifying or is this witness testifying?

Mr. Grossman: Well, he was present at the hearing and it is a part of the record. The fact that it is attached there shows that it was accepted.

Mr. Kresel: The record will speak for itself then.

Mr. Grossman: All right.

Q. Mr. Waldron, it was accepted by Governor Whitman as a record of the proceedings before Governor Dunne of Illinois and constitutes a part of the stenographer's record, does it not?

Mr. Kresel: If he knows.

Q. Yes.

56 A. Well, I couldn't say whether they were accepted by the Governor or not.

Q. It is attached to the stenographer's minutes of that hearing?

A. It is attached to the stenographer's minutes as part of the record, yes, sir.

Q. It constitutes a part of the record?

A. Yes, sir.

Q. Let me read from page 36 to you, Mr. Waldron.

A. Of which?

Q. Page 36 of the papers referred to by Mr. Kresel at the bottom; see if I quote correctly:

"The following record of a proceeding before Governor Dunne of Illinois was offered in evidence by Mr. Grossman and is herewith included as a part of this record."

A. Yes, sir.

Q. Does that refresh your recollection?

Mr. Kresel: I object to that. The witness has not stated that his recollection needs to be refreshed.

Q. You were present, weren't you?

A. I don't remember; I don't know whether I was at this hearing or not.

Q. Mr. Waldron, Mr. Kresel has asked you to look at pages 1 to 41 under date of April 26th and you have identified that as the record of the hearing on that day; is that right?

A. Yes, sir.

Q. He also referred to pages 1 to 62, which is a continuation of the former record, namely pages 1 to 41, is it not?

A. Yes, sir.

Q. These pages, 41 and 62, pages 103 in all, constitute the entire record of the heaaring on April 26th?

A. Yes, sir.

57 Q. Now, I ask you, see what follows in the stenographer's record; look at June 23rd and tell me whether you have 17 pages of a record constituting the hearing of June 23rd, 1916, before Governor Whitman?

A. Yes, sir.

Q. On page 17 it appears that an adjournment of this hearing be had until Wednesday, June 28th; is that right?

A. Yes, sir.

Q. And following that is the hearing of June 28th, consisting of one page showing an adjournment until Thursday, July 20th, 1916; is that right?

A. Yes, sir.

Q. And following that is the hearing on July 20th, showing an adjournment until July 21st, which record consists of one page?

A. Yes, sir.

Q. On July 21st there appears a record of a hearing consisting of five pages terminating in an adjournment to August 11th; is that right?

A. Yes, sir.

Q. On August 11th there appears a record of a hearing consisting of five pages; is that right, showing an adjournment to September 9th?

A. Yes, sir.

Q. Then you have referred to the hearing on September 9th consisting of 36 pages; is that right?

A. Yes, sir.

Q. Attached to these thirty-six pages of the hearing on September 9th is the hearing before Governor Dunne, had on April 22, 1916, bearing that date, consisting of 97 pages; is that right?

A. Yes, sir.

Mr. Grossman: That is all.

58 At this point the hearing adjourned to go on before Judge Hand.

Mr. Kresel: You will remember, if Your Honor please, that last Saturday we appeared before you, and I stated I would telegraph to Chicago for what they call the efficiency sheets, and it was suggested

that I get them for the period beginning in 1908, and ending in 1913. Mr. Berger, who was the Assistant State's Attorney from Chicago, telegraphed, as we said we would, and in response thereto received this letter which I will show your Honor.

"A. Donke, New York City, N. Y.

"DEAR SIR: In response to a request from Harry Berger, the Assistant State's Attorney of Cook County, I have expressed to you, care of Kresel, 37 Wall Street, New York City, all the efficiency records now in the possession of the Detective Bureau of Chicago, the monthly records sent you include November, 1911, March 1912, September 1913, November 1912, December 1912, May 1913, June 1913, July 1913, October 1913, November, 1913 and December, 1913.

"The above efficiency records are the only records of this kind and nature now in the possession of the Police Department. We are not able to furnish efficiency records for the years 1908, 1909, and 1910, or the months which are missing in the years, 1911, 1912 and 1913. There are no other similar records for the same period which would cover the same ground.

"Please return these records to the Detective Bureau at Chicago, at the end of the Biddinger case.

"Respectfully yours,

(Signed) CHARLES L. LARKIN,
"Chief of Detectives, Chicago, Illinois,
Per J. C. KEHOE, *Lieutenant."*

Now when we brought this matter before Commissioner Houghton this afternoon, Mr. Grossman insisted on coming before Your Honor to argue, and here we are.

Mr. Grossman: I want to call your Honor's attention to this fact. When we appeared before you we stated, or rather Mr. Biddinger, my client stated, that the daily time efficiency sheets would show exactly where he was at the time of the commission of these alleged crimes. Now the times alleged in these indictments are 1908, 1909 and 1910, so that what we particularly wanted was the sheets for 1908, 1909 and 1910, and especially for these months. We did not so much care for 1911, 1912 and 1913 because, while they were important to show Biddinger's activities as a member of the Department, for years after the time when he is alleged to have fled, yet the important point, and the one point *wo* which your Honor restricted us upon the hearing was the physical presence of Biddinger at the time of the commission of these alleged crimes.

Mr. Kresel undoubtedly wrote a letter and, in anything which I say, I wish your Honor to understand that I make no aspersions upon my good friend, but I do say that when they write a letter and say, "We have not now in our possession the time efficiency sheets of 1908, 1909 and 1910," we say it is a subterfuge. If the District Attorney of Cook County, or any other official borrowed these records for use by him, the statement contained in that letter would be true, that the Department has not now these records in their possession. If they have them under their control; if they know where they are,

so that they may be available to us, we are entitled to know it. My one object is to get at those records, if they exist, and we are
60 entitled to have them. I do not wish to be brushed aside in so important a matter by the statement of a clerk who says, "These records are not now in my possession but I will send you other records." That is all.

The Court: Mr. Grossman, is it not true that this defendant was undoubtedly, during some of these times, in Chicago, the times that are alleged in the indictment?

Mr. Grossman: It is certainly true that at all of those times he was a member of the Department.

The Court: Isn't it true that during some of them he was undoubtedly in Chicago?

Mr. Grossman: The records may show that on each of these dates he was in Idaho, California or Colorado.

The Court: In other words, doesn't his own recollection enable him to tell that he was at some place or other at the time of the commission of the alleged crimes; that he was there, that he made an arrest or didn't make an arrest or something, some collateral circumstance?

Mr. Grossman: Not with respect to these particular dates, your Honor.

The Court: Not with regard to any of them?

Mr. Grossman: No, sir. But the records would show absolutely and unequivocally, and inasmuch as they are records of our opponents, the State of Illinois and they are available, we would have an opportunity to examine them.

Now if my friend will present an affidavit from this man, if he be a superior official, that the records have been destroyed, that might be acceptable to us, but if he simply stands upon that statement, I want an opportunity to write to our Chicago correspondent, as I will tonight, and have him ascertain from the Clerk of the Department where those records for 1908, 1909 and 1910 are.

The Court: To what date did I put this over?

Mr. Grossman: Until the 20th.

Mr. Kresel: I have no objection to that.

61 The Court: There is no objection to that.

Mr. Grossman: I have no doubt I can get an answer. After examining these, even for the period of 1911, 1912 and 1913, your Honor will observe that he has omitted several months; he has omitted January and February, April, May, June, July and August, and October, 1912, and has only sent three months' records.

Now I happen to have here a book entitled, "Report of the General Superintendent of Police of Chicago for the year ending 1911," which book shows that on July 7th, 1911, Biddinger arrested a fugitive named George Johnson, who was charged with having forfeited his bond and that such arrest was made on July 7th in the City of New York. Mr. Biddinger informs me that at that time he brought this fugitive from Illinois to the City of New York and was gone for a period of three weeks. Now I ask your Honor to bear in mind that important fact in connection with the uniform affidavits

in this case, that Biddinger fled from the City of Chicago, State of Illinois, on the 11th of May, 1911, and has not been within the four corners of the State of Illinois since that time.

I am also able to show, by this book, which is a report of the General Superintendent of Police for the year 1911, that as late as August 8th, 1911, Mr. Biddinger arrested B. Nichols, wanted at Cambridge, Maryland, on several charges of forgery, and turned him over to the Maryland authorities.

There was an activity of his on August 8th, 1911, three months after the time when these witnesses swore positively that Biddinger fled from the State of Illinois.

While I would like to show that he was engaged in other activities subsequent to August 8th, 1911, I am prevented from doing it because my friend produces here the record of a single month in 1911, the month of November; the record for the other eleven months are not here.

62 Take 1912, he gives us a record of only four months; for 1913 he gives us a record of only six months, May, June, July, October, November and December.

But when you consider that he does not give us a single record for 1908, 1909 and 1910, which are the three preceding years and the three during which he is charged with having committed these offenses, it seems to be a matter upon which I have a right to trouble your Honor, loathe as I am to do so.

The Court: What are you doing in there before Mr. Houghton now, making arguments?

Mr. Kresel: We have been doing that, and Mr. Grossman has been offering letters and telegrams galore that passed between the Governor of West Virginia and the Governor of the State of New York.

Mr. Grossman: I offered everything which was considered by the Governor of the State of New York.

Mr. Kresel: We had reams of that all afternoon, from three o'clock until we came into this room the time has been taken up with that.

The Court: What are you proposing to prove before Mr. Houghton?

Mr. Kresel: The Commissioner is here and will tell your Honor that I am right.

The Court: What more are you going to put in, because I do not want to have a record that looks perfectly absurd.

Mr. Kresel: It is going to look absurd on the face of it.

Mr. Grossman: I will tell you what I really think, your Honor. I really think that on Monday, when I get my offers of proof in shape, that I will be prepared to eliminate practically all of this record, practically all of it, upon the offers of proof.

63 Mr. Kresel: And we have been paying for the stenographer's minutes, for all that you are going to eliminate.

Mr. Grossman: That cannot be helped.

Mr. Kresel: All right, go ahead. I would like to make this statement to your Honor. So much has been said here as to whether Biddinger knows whether he was present in Chicago on the dates mentioned in the indictments, which is really the important thing, that

I say to your Honor that if Mr. Biddinger will take the stand and testify that he doesn't recollect, I have means of refreshing his recollection and show that he was present in the City of Chicago on the dates named in the indictment, and I will refresh his recollection by affidavits signed by him, complaints made by him against persons whom he arrested on the very dates laid in the indictments. I will refresh his recollection by entries in the arrest books, showing he made those arrests. I will refresh his recollection by his own signature and the facts of warrants that he executed on the very dates laid in those indictments.

But I do not propose to furnish my friend with ammunition unless this man takes the witness stand and says under oath that he does not remember whether he was present there on those dates or not.

Mr. Grossman: My friend says that he does not propose to furnish me with ammunition—all I want is evidence presented to me personally that he was there.

Mr. Kresel: That I am trying to do, and it is your business to show that he was not there.

Mr. Grossman: Of course, and you also know that it is impossible for any man to know, and I take it that if ninety-nine out of a hundred men were asked where they were on the 30th of October, 1908, they couldn't tell you.

But I will accept this, if he puts his client on the stand. I will put Biddinger on the stand.

64 The Court: I think that would make the record still more undesirable then it apparently is.

Mr. Grossman: I dare say it would.

Mr. Kresel: If your Honor desires to see those documents, I will exhibit them to you; I have them, but I don't propose to give them ammunition.

Mr. Grossman: Let me ask how it is going to furnish Biddinger with the slightest ammunition to show him that he was in Illinois on the 30th of October, 1908?

The Court: I don't know.

Mr. Kresel: May I answer that—Biddinger knows full well that he was there and he is only doing this in order to delay and I want him to take the penalty of what he is doing. If he will take the witness stand and say under oath that he does not remember, I will give him the information.

Mr. Grossman: I repeat again that Mr. Kresel has not shown where it will benefit Mr. Biddinger in the least to show him any affidavit signed by him, or any warrant showing the execution of an arrest on these particular days, it won't benefit him at all. If he does that he will concede his presence in Illinois.

Mr. Kresel: That is a fine way to try a lawsuit.

Mr. Grossman: Is that a fine way to try a lawsuit? Where a lawyer has the information showing the physical presence in the demanding State and counsel for the Relator says that if he was there we will concede it, but we don't know whether he was there or not?

The Court: Of course, Mr. Grossman, you cannot expect to have

much more time to prove that you were not there; you have had about two or three months on this; this was always an issue, as to whether he was in the demanding State at the time the crimes were committed.

Mr. Kresel: They didn't claim before the Governor that
65 he wasn't there.

Mr. Grossman: But these things have not been available to us; this evidence has not been available, why shouldn't we have it?

The Court: Have you any reason to believe that when it is available, it will do you any good?

Mr. Grossman: I am frank to say to your Honor that our answer is we do not know. He was a patrolman; he was employed by the Department. But we do know, however that the statements contained in the papers, upon which the Executive warrant issued, charged that Biddinger fled from Illinois on the 10th of May, 1911, and we know from the only record which we have been able to obtain that this is absolutely untrue, and the official records show two arrests made, one in July and one in August, 1911. What other arrests he made in fugitive proceedings and how many other absences from Illinois he occasioned under official direction, we of course are unable to tell excepting by these records, and these records, it is perfectly apparent, are incomplete.

All I say is, if they have these records, or if they have consulted them, give us an inspection of them. If they haven't got them, of course, we can't have them and we don't want them, and I won't ask for them. Mr. Kresel can facilitate us very very much if he has the documentary evidence, as he says he has.

To show that Biddinger was in Illinois, absolutely no injury can come to his case by showing us the evidence, and we will concede it upon the record.

Mr. Kresel: I will show that evidence if your Honor says I should—I will show it to your Honor right here now, it will only take me ten minutes, I have it in the Commissioner's room, and that can be cleared up right now, but I don't want to go into
66 that, and then Mr. Grossman will say, But you didn't produce the record as to one date, you produced it only as to five, out of six, then there will be more delay and more telegraphing to Chicago, and I want to get through with this some time.

The Court: Yes, I am not going to give any more time. You can write to Chicago, that is all right, but this hearing will have to come to a close, of course, on the date I have set.

Mr. Grossman: Your Honor. I haven't asked for any delay.

The Court: How about the Governor of West Virginia, how is he getting along in this matter. He wanted to testify.

Mr. Grossman: I assume, sir, that the depositions are being taken. I expect them here by the 20th.

I hope your Honor understands that, so far as I am concerned, having agreed to close by the 20th, I propose to close by the 20th, but I also hope your Honor understands that whatever is being done now before Commissioner Houghton is being done because I have

not yet arranged my offers of proof, but I haven't any doubt that when I have them arranged, it will simplify the entire record and limit it to the questions I have raised.

Only I would like very much, because of the duty I owe to my client, to satisfy myself about his physical presence or absence, at the times stated in these indictments, and the effort I am making is in that direction, which I think your Honor will see is a very proper effort, and is in pursuance of a duty which I owe my client because if these records could show his absence from Illinois and in other States on official duty, it would be my business to offer that proof to your Honor.

Supposing these records should show that on these five dates mentioned in the indictment he was actually out of the State, it
67 would be my duty to procure that evidence, and to offer it to the Court, and it is in pursuance of that duty, as I view it, that I am making this effort to obtain the record.

Mr. Kresel: May I make a suggestion, if your Honor please, I would bring those things in here but they are very bulky and they are big books, but if you will be good enough to step over to the Commissioner's room and stay with us for ten minutes——

The Court: We must undoubtedly believe, both of us that you have the things which at least subject to the verification of signature, or something, substantiates that claim. There is no use of my going over there.

Mr. Kresel: All right.

Mr. Grossman: May Mr. Kresel bring them in here and show them here.

Mr. Kresel: Certainly, I will do that.

The Court: If you want him to show them to me.

Mr. Grossman: Oh, no, I said to us.

The Court: I don't see any reason why you shouldn't show them to the other side.

Mr. Kresel: All right, Judge; if you say so, I will do it.

The Court: I don't say that it is your duty to do it, you have to be the judge of that, but I do not see, from what you said, why you shouldn't do it.

Mr. Kresel: Well, I don't want you to feel that I am not doing what is right in the matter.

Mr. Grossman: I don't want any favors of Mr. Kresel, I merely feel I am entitled to it as a matter of right.

The Court: If you have all this evidence, I am inclined to fell that no more time should be given to this matter of the efficiency and no more testimony need be taken.

Mr. Grossman: I agree with your Honor. If Mr. Kresel has the testimony showing Biddinger's presence there on these dates; it would be useless to occupy our time in examining efficiency
68 sheets.

My only purpose in examining them, (and I do wish your Honor would understand this) is to ascertain for my own satisfaction whether he was indeed present, or whether, as a matter of fact, he was absent from the State on those five days.

Mr. Kresel: I will go in now and put those things before the Commissioner and we will be through with that.

The Court: Very well. Put those things in and give us these efficiency sheets.

Mr. Grossman: He needs not even put them in. If he shows them to me, that will be all right.

Mr. Kresel: No, I will put it on the record. I don't want any mistakes about it later. I will put on the record those affidavits.

The Court: Have you got some witness to his signature or will he probably admit it.

Mr. Grossman: I will object to affidavits that I have not had an opportunity of cross-examining.

Mr. Kresel: I mean affidavits signed by Biddinger, bearing his signature and sworn to before a Judge of the Municipal Court of Chicago.

Mr. Grossman: If it is his signature I won't even dispute it.

The Court: I don't see why you want to put them in, if he will state that he promises to offer no testimony in regard to the presence of the relator at the time of the commission of the alleged offenses in the State of Illinois—maybe he will do that.

Mr. Grossman: I will state, sir, if Mr. Kresel shows me these documents, I will then state that we will offer no proof upon the question of his absence from Illinois on those particular days. I want to simplify this record and be entirely fair.

69 (Whereupon the hearing adjourned again to continue before Commissioner Houghton.)

Mr. Kresel: I exhibit to Mr. Grossman, complaint in the Municipal Court of Chicago, signed by Guy Biddinger and sworn to by him before Homer K. Galpin, Clerk of the Municipal Court of Chicago, dated the 15th day of February, 1909.

I also exhibit to Mr. Grossman complaint in the Municipal Court of Chicago, signed by Guy Biddinger before Homer K. Galpin, Clerk of the Municipal Court of Chicago on the 1st day of September, 1910.

I also exhibit to Mr. Grossman a book of the Police Department of the City of Chicago, entitled, "Record of Arrest" and to certain entries under date of September 2, 1910, and particularly to the last four entries, showing four arrests made by Biddinger and Morgan on the 2nd of September, 1910.

I also exhibit to Mr. Grossman a warrant issued out of the Municipal Court of Chicago, State of Illinois, dated the 30th day of August, 1919, bearing the endorsement on the back thereof, under date of August 31, 1910, showing over the signature of Guy B. Biddinger that on that day he executed that warrant.

I exhibit to Mr. Grossman another warrant issued out of the Municipal Court of Chicago which bears upon the back of it, over the signature of Guy B. Biddinger, the endorsement that on 31st day of October, 1908, he executed that warrant.

I further exhibit to Mr. Grossman a warrant issued out of the

Municipal Court of Chicago, bearing the endorsement of Guy Biddinger, showing that he executed that on the 24th of May, 1910.

I exhibit a complaint signed by Biddinger in the Municipal Court of Chicago, dated October 19, 1908.

I exhibit to Mr. Grossman a book endorsed "Time Roll, January, February and March, 1909," bearing the label 93, being the time roll book of the Department of the Police of the City of
70 Chicago, and containing the month of February, 1909, showing that Guy Biddinger, star No. 201, lived at 3924 Prairie Avenue and served during the month of February, 1909, in the Detective Bureau for twenty-eight days.

I exhibit to Mr. Grossman, a book endorsed "Time Roll, April and May, 1910," bearing the label 98, being the time roll of the Department of Police of the City of Chicago and point to the entry under date of May 31st, 1910, showing that Guy Biddinger, star No. 201, living at 12 West Ohio Street, worked during the month of May, 31 days?

I exhibit to Mr. Grossman another book endorsed, "Time Roll, October, November and December, 1908, bearing the label 92, containing the time roll for the Department of the Police of the City of Chicago, and point to the entry under date of October 31st, 1908, showing that Guy Biddinger, star 201, lived at 3924 Prairie Avenue, and worked during the month of October, thirty-one days.

I also exhibit to Mr. Grossman a book of the Police Department entitled, "Time Book, Policemen of the Detective Bureau" and particularly to the month of May, 1910, (known as the Lieutenants' Time Book) showing that Guy Biddinger, star No. 201, was present during every day during the month of May, 1910, the said time roll being kept in columns, one Column for each day.

In the same book just described, I point to the entries under the Month of September, 1910, showing that during that month, Guy Biddinger, star No. 201, was present during each day of that month, said record being kept in the way described with reference to the month of May, 1910.

I also exhibit the arrest book for the Department of the Police of the City of Chicago under date of October 14th, 1916 and point to the entry of an arrest made by Biddinger and Dubach on that day of a man named John Roche.

Also on October 16th, 1908, in the same arrest book, I
71 point to entry of an arrest by Biddinger and Dubach of a man named Edward Brooks.

Also on the 28th of October, 1908, I point to an entry of two arrests made by Biddinger on that day, one of Otto B. Schmidt, another, George W. Sturdevant, and, under date of October 29th, 1908, in the same book, I point to the entry of an arrest made by Biddinger and Doubach, of one Herbert Josephs.

In this same book, under date of February 13th, I point to the entry of an arrest made by Biddinger and Howe of one Frank Burns.

Let the record show that Mr. Donke is recalled. AUGUEST W. DONKE, recalled as a witness.

Mr. Kresel: Now I ask Mr. Grossman to state on the record whether, in view of the documents and records that I have produced, and which he has inspected, he will state on the record that he does or does not intend to offer evidence as to whether Biddinger was present in the City of Chicago at the time alleged in the indictments, as the date when the crimes are alleged to have been committed.

By Mr. Grossman:

Q. Mr. Donke, I just want to ask you a question.

Mr. Kresel: I would like to have an answer to my question.
Mr. Grossman: You have an answer to it.
Mr. Kresel: I would like to have it now, I am entitled to it.
Mr. Grossman: You mean before I examine Mr. Donke.
Mr. Kresel: Yes.
Mr. Grossman: All right, Mr. Kresel, I will accommodate you now.
Mr. Kresel: You don't need to accommodate me.
Mr. Grossman: I will accommodate you. It isn't necessary for me to answer you now, but I will tell you that I shall not offer
72 any evidence at all upon the question of Mr. Biddinger's actual presence in Chicago at any of the times specified by you in these documents.
Mr. Kresel: Do you think that is an answer to my question.
Mr. Grossman: What more do you want?
Mr. Kresel: My question and the Court's question was, whether you propose to offer any evidence as to Biddinger's presence in Chicago on the dates set forth in the indictment.
Mr. Grossman: No.
Mr. Kresel: You do not?
Mr. Grossman: No.
Mr. Kresel: All right.

Q. Mr. Donke, I show you a book entitled Rules and Regulations of the Department of Police of the City of Chicago, for 1910; do you recognize it?
A. I do.
Q. What is it?
A. It is a rule book of the Police Department of the City of Chicago now in force.
Q. And in force since 1910?
A. Yes, sir, since November 1st, 1910.

Mr. Grossman: I don't want to burden the record, Mr. Kresel, but I want to offer in evidence certain paragraphs in this book.
Mr. Kresel: You can offer them and I shall object to them upon the ground they are immaterial, irrelevant and incompetent, it now appearing that whatever is contained in that book went into force in November, 1910, and the last date mentioned in any of the indictments being September, 1910.

Mr. Grossman: It is not in connection with the dates mentioned in the indictments, it is offered in connection with the conduct of the defendant in 1911, when he is alleged to have fled from the City of Chicago.

Mr. Kresel: My contention is that that is immaterial, irrelevant and incompetent——

73 Mr. Grossman: May I then do this, call out such paragraphs as I think are important and make the offer on Monday.

Mr. Kresel: Certainly.

Mr. Grossman: You will object to it and the Court will rule upon it then.

Mr. Kresel: But I mean so far as the identity of the book is concerned, that won't be questioned?

Mr. Grossman: No.

Mr. Kresel: Mark it for identification.

(Marked Exhibit 40 for identification.)

Mr. Grossman: Now, Mr. Commissioner, the only open question is with reference to offering the testimony before the Governor, and I want to read it through and see whether it should be offered or not. There is no other evidence that I shall offer before the Court, or before you. I feel that we can simplify the entire record by offering to prove the evidence which I consider important, under the suggestion of the Court, as Mr. Kresel and I did at the last hearing, so I do not think you need have any more hearing; in fact I think I shall see Mr. Kresel and go over this record as it is and see if it cannot be simplified and condensed.

Then so far as the proceeding before Mr. Houghton is concerned, we are adjourned sine die.

Mr. Kresel: Sine die.

The Commissioner: Then it is closed. You might put hearing closed before me.

Hearing closed.

74 United States District Court, Southern District of New York.

Before Hon. Augustus N. Hand, J.

Misc. 2-85.

In the Matter of GUY B. BIDDINGER.

New York,
Tuesday, November 21, 1916.

Appearances:

Isidor J. Kresel, Esq., representing the State of Illinois.

House, Grossman & Vorhaus, Esqs., Representing Guy B. Biddinger.

Moses H. Grossman, Charles H. Griffith, Charles Goldzier, of Counsel.

Mr. Grossman: I stated to your Honor that I would endeavor to simplify the record, and I think it will be easy for us to do so.

So far as the conversations and arguments are concerned, I am perfectly willing, sir, to eliminate them, if my friend is willing, to bring the record down to such an issue as will be satisfactory to the Court, to my friend, and to myself, in order to present the real issues involved, and to present them as succinctly as possible.

We issued a Writ of habeas corpus. They made a return filed the Executive Warrant of Extradition, and then we filed a traverse.

My friend offers in evidence the warrant of extradition and the papers upon which that warrant of extradition is basis, namely, the second requisition.

We come into court and a ruling is made by your Honor, that there is only one question involved, and that is, was the re-
75 lator physically, corporeally present in the demanding State, Illinois, at the time of the commission of the alleged offenses.

We claim that we ought not to be limited to that one question, but that we are entitled to prove other things, namely, that the statute of limitations has run, that the application for extradition is in bad faith, and so forth, and so forth. We have made our offers of proof. We will complete our offers of proof.

We offer to prove that at the time of the appointment of any person as a member of the Police Department of the City of Chicago and State of Illinois, he must be, and during the term of his employment thereafter, must always remain a citizen of the State of Illinois, and an actual resident of the City of Chicago, in that State.

Mr. Kresel: I object upon the ground that that is immaterial, irrelevant and incompetent.

The Court: I will sustain the objection. I do not understand it. I think it is irrelevant.

Mr. Grossman: We except. We offer to prove that on the 25th day of November, 1913, the relator, Biddinger, was duly promoted and advanced by the head of the Police Department of the City of Chicago, State of Illinois, from position of detective, to that of detective-sergeant.

Mr. Kresel: To that I raise the same objection, that is immaterial.

The Court: The objection is sustained.

Mr. Grossman: Exception. We offer to prove that A. Leo Weil, whom your Honor knows is charged with being the head and front of this offending, and who is charged with inspiring and initiating the extradition proceedings, was charged under four indictments with attempted bribery of the Public Service Commission, which indictments were found and filed in the intermediate Court of Kanawha County, West Virginia, at the January 1915 Term of that Court; that he obtained a writ of prohibition to restrain the
76 said Intermediate Court, which is the Criminal Court of the State of West Virginia, in which said indictments were found and are pending, from proceeding with the trial of such indictment, which writ of prohibition was granted in March, 1915; that subsequently and about October, 1915, the Supreme Court of Appeals of the State of West Virginia reversed the writ of prohibition; that

thereupon in or about October, 1915, the said A. Leo Weil prayed for and obtained a writ of error and supersedeas to the Supreme Court of the United States to review the order of the Supreme Court of Appeals of West Virginia, reversing the writ of prohibition, and thus obtained a stay of proceedings; that such appeal and stay have ever since been and now are pending and in full force and effect; and that the relator, Guy Biddinger, is a necessary and indispensable—in fact the most important witness for the State of West Virginia, in the said prosecution against said A. Leo Weil.

Mr. Kresel: To that I object on the ground that such testimony would be irrelevant, incompetent and immaterial.

The Court: Objection sustained.

Mr. Grossman: Exception. We offer to prove that when the writ of prohibition was reversed by the Supreme Court of Appeals of the State of West Virginia, and some time in January 1916, the said A. Leo Weil employed lawyers and detectives in Illinois, and by the use of his own personal moneys, activities and influence, caused 51 complaints or informations for 51 separate alleged crimes to be filed before, and 51 separate warrants to be issued by a Police Judge of the City of Chicago which complaints and warrants said Weil took to the State's Attorney of Cook County, Illinois, who made an application to Governor Dunne of Illinois, based upon that, for a requisition upon Governor Whitman of New York, for the extradition of Biddinger; that the warrant of extradition was signed by
77 Governor Whitman of New York, that hearings were had before Governor Whitman and Governor Dunne separately; that Governor Dunne revoked his requisition; and that thereupon Governor Whitman vacated his warrant, on or about May 1st, 1916.

Mr. Kresel: To that I object upon the ground that it is incompetent, irrelevant and immaterial; that refers to a matter which is not the basis of the warrant under which the relator has been arrested, and as to which these proceedings have been instituted.

The Court: The objection is sustained.

Mr. Grossman: We except.

We offer to prove that at a public hearing upon an application for the withdrawal of the requisition for Biddinger's extradition from New York, held before Governor Dunne of Illinois on April 22nd, 1916, the Governor of Illinois in deciding to withdraw his then pending requisition for the extradition of Biddinger from the State of New York, made the following statements which are a part of the record:

That it appears that Biddinger was indicted for crimes committed five to eight years ago in the State of Illinois, at the instance of A. Leo Weil, the defendant in a criminal prosecution in West Virginia; that he did not think one State should step in and interfere with the legal proceedings being conducted in another State, unless there will be great injury to that State; that he did not see any great injury to the State of Illinois in recalling the requisition and reissuing it at the proper time, that is, after the West Virginia proceedings against Weil are disposed of; that Biddinger can be secured by the State of Illinois at any time that the State wants him, and that after the

criminal proceedings against Weil are disposed of in West Virginia, this writ of extradition can be directed to any Governor of
78 any State in the United States; that this is a very serious charge, of enormous value to the community of West Virginia, against Weil; that the charges against Biddinger in Illinois are police graft, petty in comparison with the charge in West Virginia, which is attempting to bribe officials of that State, members of the Public Service Commission, one of the most important bodies of that State, and that he did not think he ought to step in and interfere in any way in that proceeding; that after making these statements and rendering the opinoun and decision aforesaid, Governor Dunne ordered his requisition withdrawn.

Mr. Kresel: To that I object upon the ground that that is incompetent, irrelevant and immaterial, and refers to a requisition upon complaints that are not the basis upon which the warrant of the Governor of this State was issued, which is here in question in this proceeding of habeas corpus.

The Court: The objection is sustained.

Mr. Grossman: We except.

We offer to prove that the Governor of West Virginia by several communications addressed to Governor Dunne of Illinois, and to Governor Whitman of New York, sought to prevent the extradition of the relator, Biddinger, or at least the suspension of the Executive Warrant, upon the grounds urged by him, that Biddinger was an indispensable witness in the prosecution of the indictments against said Weil in West Virginia, and that Governor Hatfield would and did guarantee that the said Biddinger would surrender himself to the jurisdiction of the State of Illinois, or the State of New York, whenever required, after having testified in such criminal proceedings in West Virginia, and thereunto he pledged his personal honor and the integrity of the State of West Virginia.

Mr. Kresel: I object to that upon the ground that that is immaterial.

The Court: The objection is sustained.

79 Mr. Grossman: We except.

We offer to prove that Governor Dunne of Illinois did state to Governor Whitman of New York that if Governor Whitman signed the warrant of extradition, Governor Dunne had the promise of the State's Attorney of Cook County that Biddinger would not be tried in Illinois until Weil's case had been tried in West Virginia. I offer to prove that upon this statement by Governor Whitman the relator Biddinger offered to give, and now offers to give, a surety company bond, or cash bail in whatever amount might be required, to answer to the indictments found against him in Illinois, but that the State's Attorney of Cook County, Illinois, refuses to accept surety company *bill* or cash bail or to enter into any stipulation or agreement not to try Biddinger until after Weil had been tried, but stated that he would try Biddinger immediately or at any time he saw fit.

Mr. Kresel: To that I object upon the ground that it is immaterial, incompetent and irrelevant, and that this Court cannot pass upon the exercise, by the District Attorney of Cook County, of his

constitutional powers to try a person whenever the necessities of the County require, whenever he has him in his jurisdiction.

The Court: Objection sustained.

Mr. Grossman: Exception.

So much for the offers.

Mr. Kresel: Pardon me a minute. I think the record should show that with reference to the refusal to take bail as alleged, the refusal was made in the absence of the defendant, that he did not appear in Cook County.

Mr. Grossman: In order to make it perfectly plain upon the record, we then offered and offer now to give cash bail, which does not require or involve the personal presence of the relator in Illinois.

We offered and now offer to give National Surety Company
80 bond as bail, in any amount which my friend suggests is proper, and that bond will be executed here and now by the National Surety Company, and by the relator, and given to Mr. Kresel as counsel for the State of Illinois, which he can forward to the State's Attorney in Cook County.

Mr. Kresel: As to that offer I desire to say that that is immaterial here, and further I desire to say that the State of Illinois declines to treat with a fugitive from its justice until he surrenders himself.

Mr. Grossman: My answer is that a man who offers to give cash bail for his appearance, or a surety company bond, is not a fugitive from justice; that Biddinger is not a fugitive and never was.

Mr. Kresel: I have nothing further to add.

Mr. Grossman: It was also stated by my friend that I might read in the statute of Illinois——

The Court: What about these depositions. Have they been taken?

Mr. Grossman: No, I have taken that in my offer of proof.

The Court: So the Governor has not testified out there.

Mr. Kresel: He never intended to have him testify.

Mr. Grossman: Mr. Kresel, you said we never intended to have Biddinger here today. Now in view of the offer of proof and the simplification——

The Court: Don't say that about your adversary. The Governor's Secretary wrote himself that he desired to testify.

Mr. Grossman: I have his offer of proof, sir. I have here a copy of the statute, and I will suggest this, I will read this as a copy of the statutes, and if it differs from the statute in any word or comma, Mr. Kresel and I can agree upon it and change it in accordance with the published volume.

Mr. Kresel: There is no objection.

81 Mr. Grossman: I now read from the Illinois statutes:

"Time of commencing prosecutions, limitations, Section 313: For murder or manslaughter, Section 1, an indictment for the crime of murder or manslaughter may be found at any [illegible] after the death of the person alleged to have been killed.

"Section 314, for arson or forgery, Section 2, an indictment for arson or forgery may be found at any time after the commission of a crime.

"Section 315, for other felonies, Section 3 (this, your Honor, being the section under which we come): All indictments for other felonies must be found within three years next after the commission of the crime except as otherwise provided by law.

"Section 316, for other offenses, etc., Section 4: All prosecutions by indictment or otherwise for misdemeanors or for any fine or forfeit under any penal statute shall be within one year and six months from the time of committing the offense, or incurring the fine or forfeiture, except as otherwise provided by law. (See Section 64, pages 868-869.)

"Section 317, time of absence not counted, Section 5: No period during which the party was charged was not usually and publicly resident within this State, shall be included in the time of limitation."

Mr. Kresel: The Sections just read into the record are sections 313 to 317, both inclusive, of the Revised Statutes of the State of Illinois for 1913, and were the law of Illinois at the times mentioned in the extradition papers, and are now.

We desire to read two sections of the book of rules and regulations of the Police Department of the City of Chicago, which was identified by the officer at the hearing and is considered to be the book of rules.

Mr. Kresel: I object to the reading of any part of the book of rules of the Police Department, upon the ground that it is immaterial, irrelevant and incompetent.

82 The Court: What is the purpose of the offer.

Mr. Grossman: The purpose of the offer is to show that Biddinger was constantly under the supervision and control of the Police Department of Chicago at all of the times mentioned in the requisition and up until the time of the acceptance of his resignation as a member of the Police Department, which occurred on January 26th, 1914. I wish to read these rules and then if my friend desires to object——

The Court: Why don't you offer to prove that, instead of reading the rules. I will exclude the rules.

Mr. Grossman: I except.

I will make my offer of proof, your Honor, but it is necessary for me first to identify the book of rules. That I have done, I called the officer.

The Court: All right.

Mr. Grossman: It is conceded, sir, that I am now reading from the book of rules of the Police Department of the City of Chicago, which went into effect November 1st, 1910, and has been in effect ever since that time, and is now in effect. That is all I want.

Mr. Kresel: As to the book being the book of rules of the Police Department of Chicago, that it went into effect November 1st, 1910, I concede that.

Mr. Grossman: And has been in effect ever since?

Mr. Kresel: Yes, and has been in effect ever since. Now, wait a moment. But I object to that book going in evidence, or any part of it going in evidence, upon the ground that it is incompetent,

irrelevant and immaterial. That the latest date mentioned in any of the indictments is September 2nd, 1910, so that even if it were competent to prove what the rules at that time were, this book of rules went into effect November 1st, 1910.

Mr. Grossman: I will read them and take my exception after I put them upon the record.

83 Mr. Kresel: I object to your reading—that is just what I do not want.

Mr. Grossman: I have a right to have them upon the record in order to make my exception effective.

Mr. Kresel: You have a right to have them marked for identification for that purpose.

The Court: That is sufficient for your purpose. In offering that book of rules your purpose is to show that he was constantly under the jurisdiction of the Police Department. It seems to me that that is irrelevant, and I will sustain the objection. You may mark it for identification.

(Sections 7 and 8 of the aforesaid book of rules marked Exhibits 1 and 2 of November 21st, 1916.)

Mr. Grossman: I offer in evidence separately, Biddinger exhibits 14 for identification, to and including 39 for identification, the exhibits having been marked for identification on November 15, 1916.

Mr. Kresel: Insofar as those exhibits are concerned, that I did not consent to go in evidence before the Commissioner, because I think you will find among these there are some I said I had no objection to. Insofar as those are concerned that I did object to there, I object now on the ground that they are immaterial, irrelevant and incompetent.

Mr. Grossman: And each of them is excluded upon that ground and I except.

The Court: Yes, I understand them to be correspondence about the case between the Governors.

Mr. Kresel: Between Governor Whitman and Governor Hatfield of West Virginia, between Mr. Grossman and Governor Whitman, and between Governor Dunne and Governor Whitman, and between Governor Dunne and Governor Hatfield.

The Court: I think my ruling is understand.

Mr. Grossman: I desire exceptions to each of the papers. That is all.

84 Mr. Kresel: Do you desire to make any argument.

Mr. Grossman: No, I think we understand this matter thoroughly. I don't care to burden you, your Honor. Of course, I reserve the right to make an argument, if I think it is necessary, after hearing from Mr. Kresel.

The Court: Just address yourself to the question as to whether there is proof of his presence or absence in the demanding state at the time of the commission of the alleged crime.

Mr. Kresel: As to that point you will recall on last Wednesday we appeared before you and I stated that I had certain records which showed Mr. Biddinger's presence in the demanding State and after our argument here we proceeded to the Commissioner's office

and I there exhibited to Mr. Grossman the various affidavits, signed by Biddinger, upon the date mentioned in the indictments, I mean affidavits signed by him as a police officer, in making arrests in Chicago, and after I had exhibited those papers I asked Mr. Grossman as follows:

"Now, I ask Mr. Grossman to state on the record whether in view of the documents and records I have produced, and which he has inspected, he will state on the record that he does or does not intend to offer evidence as to whether Biddinger was present in the City of Chicago at the time alleged in the indictments, as the dates when the crimes are alleged to have been committed" and after some parleying Mr. Grossman said this: I repeated the question and said my question and the Court's question was "whether you proposed to offer any evidence as to Biddinger's presence in Chicago on the dates set forth in the indictment.

"Mr. Grossman: No.

"Mr. Kresel: You don't?

"Mr. Grossman: No."

So that insofar as Biddinger's presence in the City of Chi-
85 cago upon the days alleged in the indictments, no proof was made by Mr. Grossman that he was not present. On the contrary, proof was submitted by me to him to show that he was present, and Mr. Grossman stated that he would offer no further proof upon that.

The Court: Does that appear upon the record?

Mr. Kresel: That appears upon the record as I have read it to your Honor.

The Court: Did you offer any in your proof, or just show it?

Mr. Kresel: I showed it to Mr. Grossman and I mentioned it. The record shows that I showed him.

Mr. Grossman: I want to say to your Honor in all fairness, I don't want to have any mistake about it, Mr. Kresel showed me a number of papers, and in accordance with my promise to your Honor that if he did that, exhibited them to me, I would advise him instanter if I would offer any proof I stated then and I state now that I do not intend to offer any proof as to Biddinger's presence in Illinois at the times stated in the indictments.

The Court: What was done before Governor Whitman in that regard?

Mr. Kresel: As to his absence from Illinois?

Mr. Grossman: Presence or absence.

Mr. Kresel: Let the record show that what Mr. Grosman means——

Mr. Grossman: I will state what I mean.

Mr. Kresel: Please state it.

Mr. Grossman: I mean I stated I did not intend to offer any proof of any kind or character bearing upon the question of Mr. Biddinger's presence or absence in the State of Illinois at the time of the commission of the alleged offense.

Mr. Kresel: At the times stated in the indictments?

Mr. Grossman: At the times stated in the indictments; that I simply stood mute upon that proposition.

86 The Court: That is as I understand.

Mr. Kresel: Has the Marshal sent you the records before Governor Whitman?

Now, if your Honor please, I offer in evidence the record of the proceedings before Governor Whitman, upon the requisition of the Governor of the State of Illinois, which resulted in the issuing by Governor Whitman of the Executive Warrant as to which this writ of habeas corpus was taken. Mr. Grossman has a copy of the minutes, and in order to describe them for the record, they consist of the testimony of Guy B. Biddinger, taken before the Governor, which commences at page 40 of the record and concludes at page 94 of the record, and also I offer in evidence the record of the hearing before Governor Whitman on September 9th, 1916, which consists of 35 pages, numbered respectively from 1 to 35, both inclusive.

Mr. Grossman: Is that all.

Mr. Kresel: That is all.

Mr. Grossman: I object to the introduction in evidence of a part of the Executive record of these hearings.

Mr. Kresel: Well, I will offer it all. There is no objection to the rest going in, absolutely none.

The Court: Very good.

Mr. Kresel: I did not want to burden the record with a lot of argument by Mr. Grossman or by myself or by Mr. Marshall, but if Mr. Grossman thinks that is better, I have no objection to its going in.

Mr. Grossman: Here is how I feel about it, your Honor: If the record is to go in, I think the entire record ought to go in, and then Mr. Kresel and I together can agree for the appeal, as to whether it is important.

The Court: Well, he is satisfied.

Mr. Kresel: I am satisfied to have the whole thing go in.

87 Mr. Grossman: The entire record of both hearings?

Mr. Kresel: Both hearings, so that there will be no question upon this record, that includes all the hearings held before Governor Whitman, beginning with the hearing of April 26, 1916, and ending on September 9th, 1916.

Mr. Grossman: That includes everything, Mr. Kresel, doesn't it?

Mr. Kresel: It includes everything that appears on the record before Governor Whitman.

(The foregoing records were marked in evidence Exhibits "A" and "B" of November 21st, 1916.)

Mr. Grossman: Yes, everything upon the record. That also includes the affidavits filed by us.

Mr. Kresel: Well, if they are part of the record, of course, they will go in.

Mr. Grossman: Well, in order to have no mistakes—well, if they are part of the record.

Mr. Kresel: Yes, the record will show whether they are.

Mr. Grossman: Well, I have here some affidavits, Mr. Kresel, marked Exhibit 4, marked November 11, Exhibit 5, and Exhibit 6.

The Court: Isn't this record all put together, so that you will know what it is before Governor Whitman?

Mr. Kresel: Yes, your Honor, I have it here in two Volumes.

Mr. Grossman: Yours Honor, a question may afterwards arise as to whether this is a part of the record, because they are not very careful up there, your Honor, in keeping records, and these affidavits were brought down by Mr. Waldron with the record. If Mr. Kresel will concede that these affidavits brought down by Mr. Waldron were a part of the record, that is all I want.

The Court: Are they, Mr. Kresel?

Mr. Kresel: I will look at them further, please.

88 The Court: Did they take a lot of oral testimony up there?

Mr. Kresel: Yes, your Honor.

Mr. Grossman: Only Biddinger's. I called Biddinger. That was the only oral testimony taken but these affidavits were filed.

Mr. Kresel: Really, your Honor, I cannot state whether they are or not; there is no mark upon them to indicate in any way.

Mr. Grossman: I will state upon the record——

Mr. Kresel: Will you please state. I don't want to say yes or no, because I don't know.

Mr. Grossman: I will state to your Honor that these affidavits——

Mr. Kresel: I do know this, if your Honor please, that at the conclusion of one hearing Mr. Grossman stated to the Governor that he would like to put in some affidavits.

Mr. Grossman: Those are others. I will state them to your Honor.

The Court: Those are others?

Mr. Grossman: Other affidavits. I have them here. I will offer them in a moment.

The Court: Let us file them. It is getting late.

Mr. Grossman: I offer in evidence these affidavits, sir, which I presented to Governor Whitman, and which he accepted, and which were considered by him as constituting a part of the files in Albany, in the Biddinger hearing.

Mr. Kresel: Upon Mr. Grossman's statement that those are the affidavits, I have no objection that they be made a part of the record before Governor Whitman. May they be marked now so that in the future there will be no question as to which affidavits they are.

89 The Court: Yes, they should be marked.

Mr. Kresel: I think they were marked for identification before the Commissioner.

(The foregoing were received in evidence and designated Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, of November 11, 1916.)

The Court: Do those cover all of your affidavits?

Mr. Grossman: No, sir, there are four more here.

The Court: Were those affidavits considered by the Governor?

Mr. Grossman: Yes, sir.

Mr. Kresel: Let me state this to your Honor, that the Governor, when Mr. Grossman made the record, the Governor stated that he did not know that he had a right to consider affidavits, but that he would let them file them. That is really what happened before the Governor.

Mr. Grossman: At the first or second hearing?

Mr. Kresel: I think at both, but I am not raising any objection. You put them in. If you are through, I desire to say a few words.

Now, if your Honor please, I move for the dismissal of this writ, and I hope that your Honor will have observed throughout this proceeding, which has now dragged through this Court for a period of five months, I have sought not to be technical, but to really get down to the merits of the situation.

For instance, the petition herein upon which this writ was issued, is signed by Charles H. Griffiths, and not by the relator. That petition is absolutely defective because the revised statutes provide that a petition upon which a writ of habeas corpus is issued must be signed and verified by the relator, and I bring this to your Honor's attention and to Mr. Grossman's attention at the outset of
90 my argument, because I think if any further proceedings are intended to be taken, that that ought to be amended, and the Court, of course, has a right to permit it to be amended. I want Mr. Grossman's attention to be called to the provisions of the Revised Statutes, Section 754, which provide that the——

The Court: Is that true in the case of every writ of habeas corpus.

Mr. Kresel: It is, sir.

The Court: In these deportation cases, friends and all srots of people——

Mr. Griffiths: It is the practice in this Court, the next friend of the relator or anyone else in his behalf.

Mr. Kresel: If your Honor will read the provisions of this section.

Mr. Grossman: Well, in order to obviate any question I move to amend in that respect.

The Court: The motion is granted.

Mr. Kresel: Now then, the petition upon which this warrant was granted, if your Honor please, sets forth that the petitioner is illegally restrained of his liberty and in violation of the laws of the United States. I have yet to learn throughout this proceeding what law of the United States it is contended has been violated by the detention of this relator.

The Court: I don't see that there is any. I agree with you so far as that is concerned.

Mr. Kresel: In the traverse to our return they allow themselves a little more latitude, and there they say that the imprisonment of your petitioner is void and illegal and in violation of the constitution and the acts of Congress. I have yet to learn what part of the Constitution of the United States it is claimed has been violated by the detention of this prisoner under the Governor's warrant, and it seems to me that it is due to the Court and to us here that

91 Mr. Grossman, if he desires to answer my argument, should point out to your Honor and to us what laws or what part of the Constitution of the United States he claims has been violated.

The Court: Well, now, Mr. Kresel, this has all been argued before, and the question is, as I understand it, which they want to raise, whether you can extradite a man on an old outlawed offense or not. I think that you can, and that the question whether it is outlawed or not has got to be tried out by the State that calls for him. That is the real substantial question, the difference between you gentlemen, isn't it.

Mr. Grossman: That and the question of good faith.

The Court: I don't think I can inquire into the good faith of the State of Illinois in asking for a requisition on the Governor of the State of New York, and I am perfectly ready to sustain your motion and dismiss this writ. The question which will arise before me will be the question on appeal. I don't know whether the appeal stays, or whether a stay will be applied for to me.

When were these offenses, the first that are set forth in the indictments, committed?

Mr. Kresel: You mean the earliest of them—October 1908.

The Court: The State of Illinois had a good time already before they started in on this extradition.

Mr. Kresel: The State of Illinois, however, was not in possession of the facts at all, until 1916, and the State of Illinois is not to be penalized because of the ability of this relator to conceal the facts from the State of Illinois.

92 Mr. Grossman: I would like to be heard in answer to my friend. I did not intend to argue, as I promised, to save your Honor's time, but——

The Court: Let me ask you, what right has this case, if any, to a preference in the C. C. A., if it gets up there?

Mr. Griffiths: We contemplate taking an appeal directly to the Supreme Court.

The Court: Oh, very good. What right has it to a preference in the Supreme Court?

Mr. Griffiths: I don't believe he has any right to a preference, except that the State may go in and ask the Court to set it for an earlier date. I think that is the only right.

Mr. Grossman: Well, Illinois has a right to make an application for a preference.

Mr. Kresel: Every appellant has that.

Mr. Grossman: All right, now, my friend has stated to your Honor that in view of two things, he asks your Honor's attention, first the history of this litigation, and second the delay already occasioned to the State of Illinois.

The Court: I don't think there has been much delay. What I do think is that the State of Illinois is very anxious to get this relator there, and the State of West Virginia is very anxious not to have him go there. That is all there is about it.

Mr. Grossman: I say it is not the State of Illinois, I say it is Mr. Weil and his private counsel. I say that it is A. Leo Weil, the

man who in April when these requisition papers were filed, was here in New York, co-operating with my friend, who came to Albany, who was there three blocks from the hearing but who would not enter the Executive Chamber and of whom I said to the Governor of the State of New York that if Mr. Weil entered the Executive Chamber at that hearing, I would call him as my witness. I say to your Honor with all the importance involved in my responsibility as Biddinger's lawyer, being willing, anxious to take him as my witness, be-
93 ing bound by his answers, out of his own mouth, to prove the wickedness and iniquity of the proceeding he was instituting against Biddinger, and I say to your Honor he did not dare enter the Executive Chamber, and I say it is that man, with all his wealth and with all his influence, who under four indictments for bribery in the State of West Virginia, has tied the hands of the Court in that State, obtained writs of prohibition, appeals, writs of error and supersedeas, and for two years has prevented a trial of indictments against him, and who himself went into the State of Illinois a few months ago and dug up poor unfortunate professional convicts and pulled them in before a police magistrate in the suburbs and predicates a petition for the extradition of Biddinger upon it, and when I had those affidavits, your Honor, not protected by a label called an indictment, which is presumed by law to have some dignity, but prevents us from seeing the evidence upon which that indictment is based, when we had the evidence, sir, we went in there and we riddled them with bullets, and we showed that all fifty-one complaints had not one basis in fact, forty-eight of the- made by a man as though he had personal knowledge of the facts, this very man, Singleton, who upon this application has backed up the State's Attorney's petition, and who swore in Chicago under our depositions that he does not know Biddinger and never saw him until the hearing was had in Albany; and as to the other three who are personal affiants having alleged personal knowledge we showed their absolute perjury, and that the charges were utterly without foundation.

The Court: What is to prevent you from going on with your trial in West Virginia now?

Mr. Grossman: Simply this, having been reversed by the Supreme Court of Appeals in West Virginia, on this writ of prohibition,
94 Mr. Weil sued out a writ of error and a supersedeas to the Supreme Court of the United States, has tied up the trial of his case, the trial of his indictments, until the hearing of this appeal, and when West Virginia moved for a preference or a dismissal of the appeal they could not get it, and I understand now that this appeal of Weil's won't come on until January of next year.

The Court: You mean 1917?

Mr. Grossman: It is possible, now, sir, it may be heard then.

The Court: Let me ask you this: Is there any decision by the Supreme Court of the United States in regard to this matter of statute of limitations in extradition cases?

Mr. Grossman: None at all, sir.

The Court: So that it is a question between these Circuit Court decisions. I think then, under those circumstances, if you have two

Circuit Court decisions and no utterance of the Supreme Court, that you should have a stay whether the appeal operates as a stay or not.

Mr. Kresel: Your Honor, under the provisions of Section 1293, of the United States Compiled Statutes of 1913, which is the Act of March 7th, 1908, in an appeal to the Supreme Court in the proceedings, where the detention is under process of State court, it will be necessary for your Honor to make a certificate of probable cause. The statute, shall I read it to your Honor?

Mr. Grossman: This is not under process of a State Court.

Mr. Kresel: That is a matter of argument.

The Court: I think if there are two Circuit Court- of Appeals absolutely differing on the subject on which the Supreme Court has not spoken, I should probably give a certificate of probable cause.

Mr. Kresel: I just wanted to call that to your Honor's attention so that you will have it in mind when your order is entered.

95 The Court: I personally do not doubt what the rule should be, I may say, but that is just my personal opinion, that of one rather than the other I am very clear about the orderly, proper way of proceeding, which is for one State to entirely recognize the process of the other and extradite a man when an indictment has been found there, if he was in the State at the time when the crime was committed. I think that is what ought to be, and I believe is the law, but when two Courts of Appeal- have differed and the Supreme Court has said nothing about it, I cannot say there is not a reasonable doubt.

Mr. Kresel: So that there isn't any use of my arguing it.

The Court: And then the whole surrounding facts of this case would lead the Court to perhaps inquire into it, if they ever would at all.

Mr. Griffiths: Can the bail remain the same on appeal?

Mr. Kresel: One minute, as to bail. I now move your Honor, that in view of your Honor's dismissal of the writ, that the amount of bail upon which this defendant was liberated by the Supreme Court of this State, upon the Governor's warrant, which is here in question, be reinstated. I don't think it needs much argument to convince your Honor that the situation insofar as Biddinger is concerned in this court has now changed. There is a decision against him by this court upon the question of the validity of the detention, and your Honor has clearly stated what in your opinion the law is, and that this extradition should be tried out, and I therefore ask that your Honor increase the bail from the sum of $15,000, which it now is, to the sum that it originally was, namely, $30,000.

Mr. Grossman: I wish to be——

96 The Court: I decline to increase the bail. These crimes which are charged are on the face of them petty crimes and the seriousness of the case is that one State wants him brought back there immediately, and the other State prefers to have him in their jurisdiction. Those are considerations which do not have to do with the gravity of the offense at all, and I think the bail is ample, and I shall not require any more.

Mr. Grossman: In fact, I think it is even large, your Honor.

The Court: Well, I shan't require any less either.

Mr. Griffiths: May the Court's order dismissing the writ be held up until the presentment of our papers on appeal, until tomorrow afternoon?

The Court: Yes.

Mr. Kresel: Is there an order to be presented to your Honor.

Mr. Griffiths: Yes, as soon as we are ready to present the papers on appeal, so that bail can be fixed on appeal.

97 EXHIBIT NO. 1 OF NOVEMBER 10, 1916.

This is the Executive warrant of Governor of New York and has already been included in this transcript as a part of the return to the writ of Habeas Corpus.

98 EXHIBIT A.

Exhibit A in Support of Petition for Writ.

Exhibit No. 2 of November 10, 1916.

State of Illinois.

Executive Department.

The Governor of the State of Illinois to the Governor of New York:

Whereas, it appears by the papers required by the Statutes of the United States, which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this State, that Guy Biddinger stands charged with the crimes of Bribery, Confidence Game and Voluntarily Permitting a Prisoner to Escape, which I certify to be a crime under the Laws of this State, committed in the County of Cook, in this State, and it having been represented to me that he has fled from the justice of this State and has taken refuge in the State of New York.

Now Therefore, pursuant to the provisions of the Constitution and the Laws of the United States in such case made and provided, I do hereby require that the said Guy Biddinger be apprehended and delivered to Patrick J. Murphy, who is hereby authorized to receive and convey him to the State of Illinois, there to be dealt with according to Law.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State, at the Capitol in the City of Springfield, this 31st day of May, A. D. 1916.

[SEAL.] (Signed) E. F. DUNNE.

By the Governor:

(Signed) LEWIS G. STEVENSON,

Secretary of State.

99 EXHIBIT "B."

Exhibit B in Support of Petition for Writ.

Exhibit No. 2 of November 10, 1916.

To His Excellency Edward F. Dunne, Governor of Illinois:

Your petitioner, State's Attorney for the County of Cook, State of Illinois, would represent unto your Excellency, that Guy Biddinger stands charged by the accompanying certified copies of indictments with the following crimes: Bribery committed in the County of Cook and State of Illinois on or about the 2nd day of September, 1910; bribery committed in the County of Cook and State of Illinois on or about the 15th day of May, 1910; bribery committed in the County of Cook and State of Illinois on or about the 15th day of February, 1909; bribery committed in the County of Cook and State of Illinois on or about the 30th day of October, 1908; confidence game committed in the County of Cook and State of Illinois on or about the 15th day of October, 1908; voluntarily permitting a prisoner to escape, committed in the County of Cook and State of Illinois on or about the 2nd day of September, 1910.

That on or about the 10th day of May, A. D. 1911, the said Guy Biddinger fled from the State of Illinois, and is now, as your petitioner verily believes, in the County of New York and State of New York, a fugitive from the justice of this State, and the grounds of such belief are as follows: Information communicated to this petitioner by the authorities in the said County of New York and State of New York.

Your petitioner further sets forth that he is informed and believes that the said Guy Biddinger has not been usually and publicly a resident of the State of Illinois since the 10th day of May, 1911.

Wherefore your petitioner prays that a requisition may issue to the Governor of said State of New York, and that Patrick J. Murphy of the City of Chicago, County of Cook and State of Illinois, may be appointed Messenger of the State of Illinois, to go after, receive and return the said fugitive to the County of Cook and State of Illinois for trial.

100 Your petitioner further certifies that in his opinion the ends of public justice require that the said Guy Biddinger be brought to this State for trial at the public expense; that he believes he has sufficient evidence to secure his conviction.

(Signed) MACLAY HOYNE,
State's Attorney of the County of Cook, State of Illinois.

Affidavit in Support of Petition for Writ.

STATE OF ILLINOIS,
County of Cook, ss:

I, Shelby M. Singleton, first being duly sworn, do solemnly declare that the facts set forth in the foregoing petition are true, and

that a requisition for the above named fugitive is not sought for the purpose of collecting a debt, to allow any person to travel at the expense of the State, or to answer any private end whatever, and shall not be used for any of said objects.

(Signed) SHELBY M. SINGLETON.

Subscribed and sworn to before me this 5th day of May, A. D. 1916.

(Signed) FRANK J. WALSH,
[SEAL] *Clerk of the Criminal Court.*

Certificate in Support of Petition for Writ.

I, John H. Williams, Acting County Judge of Cook County, State of Illinois, do hereby certify that the ends of justice require the return of Guy Biddinger.

(Signed) JOHN H. WILLIAMS,
Acting County Judge.

101 EXHIBIT "C."

Indictment in Support of Petition for Writ.

Exhibit No. 2 of November 10, 1916.

STATE OF ILLINOIS,
Cook County, ss:

Of the May Term of the Criminal Court of Cook County, in said County and State, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that heretofore, to wit, on the second day of September, in the year of our Lord one thousand nine hundred and ten, one Guy Biddinger, was a policeman and a member of the police force and a sergeant thereof of the City of Chicago, an incorporated city there situate, in said County and State, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago; that the said Guy Biddinger theretofore was appointed as such policeman, sergeant and member of the police force as aforesaid, under and by *v*irtue of the laws of the said State of Illinois and the ordinance of the said City of Chicago relating to the appointment and qualifications of policeman, sergeants and members of the police force, which said ordinance of the said City of Chicago relating to the appointment and qualifications of policemen, sergeants, and members of the police force of said City of Chicago, is in words and figures as follows, to wit:

"1731. Department established.—There is hereby established an

Executive Department of the Municipal Government of the City which shall be known as the Department of Police, and shall embrace the General Superintendent of Police, an Assistant General Superintendent of Police, a Secretary of the Department of Police, a Private Secretary to said General Superintendent, one Inspector of Police for each police division, one Captain of Police for each police district, and such number of Lieutenants, Detective Sergeants, Patrol Sergeants,
Desk Sergeants, Patrolmen and other employees as may be
102 provided by ordinance.

"1732. General Superintendent—Office Created—Appointment.—There is hereby created the office of General Superintendent of Police. He shall be appointed by the Mayor, by and with the advice and consent of the City Council."

"1734. Management of Department—Appointment of Member.—The General Superintendent shall have the management and control of all matters relating to the Department, its officers and members. He shall appoint, according to law, all officers and members of said Department."

Which said ordinance relating to the appointment and qualification of police officers was before then duly passed, adopted and promulgated, according to law, as an ordinance of said City of Chicago, by the City Council and Mayor of said City of Chicago, and was then and there a part of the laws in force in said City of Chicago; That said ordinance so passed, adopted and promulgated, also provided in and by another section thereof, the duties of the policemen, sergeants and members of the police force of said City of Chicago, which said section thereof is in words and figures as follows, to wit:

"1760. Police Duties—Power of Arrest.—The several members of the police force of the City of Chicago, when on duty, shall devote their time and attention to the discharge of the duties of their stations according to the laws and ordinances of the City and the rules and regulations of the Department, to preserve order, peace and quiet and enforce the laws and ordinances throughout the city. They shall have power to arrest all persons in the city found in the act of violating any law or ordinance or aiding or abetting in any such violating, and shall arrest any person found under circumstances which would
warrant a reasonable man in believing that such person had
103 committed or is about to commit a crime."

Which said section of said ordinance was then and there a part of the laws in force in said City of Chicago, and that the City Council of the said City of Chicago by its annual appropriation ordinance appropriated a sum of money for a certain number of policemen commonly known as sergeants and that the said Guy Biddinger was among the number of sergeants so provided for by said ordinances; that it was then and there the duty of the said Guy Biddinger to enforce the provisions of the statutes of the State of Illinois relating to larceny and it was then and there the duty of said Guy Biddinger then and there to arrest, complain against, prosecute and appear as a witness against the violators of said statutes; that one Michael O'Donnell was then and there a violator of the statutes and was commonly known as a pickpocket and had

frequently committed the crime of larceny in the said City of Chicago and was known to many persons as a pickpocket and thief and was engaged in larceny as a means of livelihood; and that said Guy Biddinger then and there in the said City of Chicago knew the premises aforesaid.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present that the said Guy Biddinger then and there well knowing the premises and then and there contriving and intending the powers and duties of his said office of policeman, sergeant and member of the police force of the said City of Chicago and the trust and confidence reposed in him to violate, prostitute and betray and contriving and intending then and then the powers and duties of his said office to discharge and perform contrary to law and with the intent and for the purpose of being influenced in his acts and doings in the performance of his said duty, to wit: The duty of enforcement of the statutes of the state of Illinois relating to larceny, then brought before him said Guy Biddinger in his official capacity as a policeman, sergeant and member of the police force by said City of Chicago and to then and there cause him the said Guy Biddinger to execute the powers in him vested as a policeman, sergeant and member of the police force of the City of Chicago, as aforesaid and to do and perform said duty of him required with partiality
104 and favor to the said Michael O'Donnell and contrary to the terms and provisions of the law relating to the offense of larceny and to cause him the said Guy Biddinger in his official capacity as aforesaid, to fail, refuse and neglect to arrest the said Michael O'Donnell and further to cause said Guy Biddinger to protect the said Michael O'Donnell from arrest and from prosecution contrary to the law then and there in said City of Chicago, knowingly corruptly and feloniously did take, accept and receive from said Michael O'Donnell on the second day of September in the year of our Lord one thousand nine hundred and ten, while he, the said Guy Biddinger was then and there on duty as a policeman, sergeant and member of the police force of the said City of Chicago as aforesaid in the said City of Chicago aforesaid, a large sum of money, to wit: the sum of twenty-five dollars in money of the value of twenty-five dollars, lawful money of the United States of America, as a bribe, present, and reward offered and given by the said Michael O'Donnell and by him, said Guy Biddinger then and there taken, accepted and received with the unlawful, wicked and corrupt purpose and intent of influencing him the said Guy Biddinger, in his office aforesaid, in his acts and doings in his said official capacity of policeman, sergeant and member of the police force of said city of Chicago in the matter of the enforcement of the statutes of the State of Illinois relating to larceny and to wickedly and corruptly cause him, said Guy Biddinger, to execute the powers in him vested as a policeman, sergeant and member of the police force as aforesaid, and to perform his said duty of him required by law with partiality and favor to said Michael O'Donnell, and to then and there induce and cause him, the said Guy Biddinger, in his office aforesaid, to permit, authorize and allow

said Michael O'Donnell to commit larceny at divers times and places and to induce and influence him the said Guy Biddinger then and there and thereafter not to arrest nor cause to be arrested the said Michael O'Donnell upon charges of larceny, and to
105 keep, save and protect said Michael O'Donnell from arrest and punishment and free, clear and exempt from police molestation, interference or attack while engaged in committing larceny and particularly while engaged in committing larceny in the City of Chicago, and while engaged in unlawful and felonious occupations of divers kinds and nature and while engaged in any criminal pursuit in the City of Chicago.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present that the said Guy Biddinger since the tenth day of May in the year of our Lord, one thousand nine hundred and eleven, and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Statute and against the peace and dignity of the *same* People of State of Illinois.

(Signed) MACLAY HOYNE,
State's Attorney.

106 G. J. 14 A. Term No. —. P. G. D. No. 8882. Criminal Court of Cook County, May Term, A. D. 1916. The People of the State of Illinois vs. Guy Biddinger. Indictment for Bribery. A True Bill. John F. Gubbins, Foreman of the Grand Jury. Witnesses: Ben Conney, Benjamin Leeman, Thomas Lyons, Tommy Thomas, Michael O'Donnell, C. P. Bertsche, Harry Steed, William Welch, Thomas Podolaski, Frank Hill, Shelby Singleton, August Donke, Clarence Glass. Filed May 5, 1916. (Signed) Frank J. Walsh, Clerk. Bail $10,000.

107 STATE OF ILLINOIS,
Cook County, ss:

Of the May Term of the Criminal Court of Cook County, in said County and State, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that heretofore, to wit, on the fifteenth day of May in the year of our Lord one thousand nine hundred and ten, one, Guy Biddinger, was a policeman and a member of the police force and a sergeant thereof of the City of Chicago, an incorporated city there situate, in said County and State, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago that the said Guy Biddinger theretofore was appointed as such policeman, sergeant and member of the police force as aforesaid under and by virtue of the laws of the said State of Illinois and

the ordinances of the said City of Chicago, relating to the appointment and qualification of policemen, sergeants and members of the police force, which said ordinance of said City of Chicago relating to the appointment and qualification of policemen, sergeants and members of the police force of said City of Chicago, is in words and figures as follows, to wit:

"1731. Department established.—There is hereby established an Executive Department of the Municipal Government of the City which shall be known as the Department of Police, and shall embrace the General Superintendent of Police, and Assistant General Superintndent of Police, a Secretary of the Department of Police, a Private Secretary to said General Superintendent, one Inspector of Police for each police division, one Captain of Police for each
108 police district, and such number of Lieutenants, Detective Sergeants, Patrol Sergeants, Desk Sergeants, Patrolmen, and other employes, as may be provided by ordinance.

"1732. General Superintendent—Office Created—Appointment.—There is hereby created the office of General Superintendent of Police. He shall be appointed by the Mayor, by and with the advice and consent of the City Council.

"1734. Management of Department—Appointment of Member.—The General Superintendent shall have the management and control of all matters relating to the Department, its office-s and members. He shall appoint, according to law, all officers and members of said Department."

Which said ordinance relating to the appointment and qualification of police officers was before then duly passed, adopted and promulgated, according to law, as an ordinance of said City of Chicago by the City Council and Mayor of said City of Chicago, and was then and there a part of the laws in force in said City of Chicago; that said ordinance so passed, adopted and promulgated, also provided in and by another section thereof, the duties of the policemen, sergeants and members of the police force of said City of Chicago, which said section thereof is in words and figures as follows, to wit:

"1760. Police Duties—Power of Arrest.—The several members of the police force of the City of Chicago, when on duty, shall devote their time and attention to the discharge of the duties of their stations according to the laws and ordinances of the City and
109 the rules and regulations of the Department, to preserve order, peace and quiet and enforce the laws and ordinances throughout the city. They shall have power to arrest all persons in the city found in the act of violating any law or ordinance or aiding or abetting in any such violating, and shall arrest any person found under circumstances which would warrant a reasonable man in believing that such person had committed or is about to commit a crime."

Which said section of said ordinance was then and there a part of the laws in force in said City of Chicago, and that the City Council of the said City of Chicago by its annual appropriation ordinance appropriated a sum of money for a certain number of

policemen commonly known as sergeants and that the said Guy Biddinger was among the number of sergeants so provided for by said ordinance; that it was then and there the duty of the said Guy Biddinger to enforce the provisions of the statutes of the State of Illinois relating to receiving stolen property, and it was then and there the duty of said Guy Biddinger then and there to arrest, complain against, prosecute and appear as a witness against the violators of said statutes; that one, Tommy Thomas was then and there a violator of the statutes and was commonly known as a receiver of stolen property and had frequently committed the crime of receiving stolen property in the said City of Chicago and was known to many persons as a pickpocket and thief and was engaged in receiving stolen property as a means of livelihood; and that said Guy Biddinger then and there in the said City of Chicago knew the premises aforesaid.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present that the said Guy Biddinger then and there well knowing the premises and then and there contriving and
110 intending the powers and duties of his said office of policeman, sergeant and member of the police force of the said City of Chicago and the trust and confidence reposed in him to violate, prostitute and betray and contriving and intending then and there the powers and duties of his said office to discharge and perform contraty to the law and with the intent and for the purpose of being influenced in his acts and doings in the performance of his said duty, to wit: The duty of enforcement of the statutes of the State of Illinois relating to receiving stolen property, then brought before him said Guy Biddinger in his official capacity as a policeman, sergeant and member of the police force of said City of Chicago and to then and there cause him the said Guy Biddinger to execute the powers in him vested as a policeman, sergeant and member of the police force of the said City of Chicago as aforesaid, and to do and perform said duty of him required with partiality and favor to the said Tommy Thomas and contrary to the terms and provisions of the law relating to the offense of receiving stolen property, and to cause him the said Guy Biddinger in his official capacity as aforesaid, to fail, refuse and neglect to arrest the said Tommy Thomas and further to cause said Guy Biddinger to protect the said Tommy Thomas from arrest and from prosecution contrary to the law then and there in said City of Chicago knowingly, corruptly and feloniously did take, accept and receive from said Tommy Thomas on the fifteenth day of May, in the year of our Lord one thousand nine hundred and ten, while he the said Guy Biddinger was then and there on duty as a policeman, sergeant and member of the police force of the said City of Chicago as aforesaid, in the said City of Chicago as aforesaid, a large sum of money, to wit: the sum of one hundred fifty dollars in money of the value of one hundred fifty dollars, lawful money of the United States of America, as a bribe, present and reward offered and given by the said
111 Tommy Thomas and by him, said Guy Biddinger then and there taken, accepted and received with the unlawful, wicked

and corrupt purpose and intent of influencing him the said Guy Biddinger in his office aforesaid in his acts and doings in his said official capacity of policeman, sergeant and member of the police force of said City of Chicago, in the matter of the enforcement of the statutes of the State of Illinois relating to receiving stolen property and to wickedly and corruptly cause him, said Guy Biddinger, to execute the powers in him vested as a policeman, sergeant and member of the police force as aforesaid and to perform his said duty of him required by law with partiality and favor to said Tommy Thomas and to then and there induce and cause him, the said Guy Biddinger, in his office aforesaid to permit, authorize and allow said Tommy Thomas to commit receiving stolen property at divers times and places and to induce and influence him, the said Guy Biddinger, then and there and thereafter not to arrest nor cause to be arrested the said Tommy Thomas upon charges of receiving stolen property, and to keep, save and protect said Tommy Thomas from arrest and punishment and free, clear and exempt from police molestation, interference or attack while engaged in committing receiving stolen property, and particularly while engaged in committing receiving stolen property in the City of Chicago, and while engaged in unlawful and felonious occupation of divers kinds and nature and while engaged in any criminal pursuit in the City of Chicago.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present that the said Guy Biddinger since the tenth day of May in the year of our Lord one thousand nine hundred and eleven and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Stature and against the peace and dignity of the *same* People of the State of Illinois.

(Signed) MACLAY HOYNE,
State's Attorney.

112 G. J. No. 16 A. Term No. —. P. G. D. No. 8884. Criminal Court of Cook County, May Term, A. D., 1916. The People of the State of Illinois vs. Guy Biddinger. Indictment for Bribery. A True Bill. John F. Gubbins, Foreman of the Grand Jury. Witnesses: Ben Cooney, Clarence Glass, Benjamin Leeman, Thomas Lyons, Tommy Thomas, Ike Kline, Michael O'Donnell, C. P. Bertsche, Harry Steed, William Welch, Thomas Podolaski, Frank Hill, Shelby Singleton, August Donke. Filed May 5th, 1916. (Signed) Frank J. Walsh, Clerk. Bail $10,000.

113 STATE OF ILLINOIS,
Cook County, ss:

On the May Term of the Criminal Court of Cook County, in said County and State, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the

authority of the People of the State of Illinois, upon their oaths present that heretofore, towit, on the fifteenth day of February in the year of our Lord one thousand nine hundred and nine, one Guy Biddinger was a policeman, and a member of the Police force and a sergeant thereof of the City of Chicago, an incorporated city there situate, in said County and State, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago; that the said Guy Biddinger theretofore was appointed as such policeman, sergeant and member of the police force as aforesaid, under and by virtue of the laws of the said State of Illinois and the ordinances of the said City of Chicago, relating to the appointment and qualification of policemen, sergeants and members of the police force, which said ordinance of said City of Chicago relating to the appointment and qualification of policemen, sergeants and members of the police force of said City of Chicago is in words and figures as follows, towit:

"1731. Department established.—There is hereby established an Executive Department of the Municipal Government of the City which shall be known as the Department of Police, and shall embrace the General Superintendent of Police, an Assistant General Superintendent of Police, a Secretary of the Department of Police, a Private Secretary to said General Superintendent, one In-
114 spector of Police for each police division, one Captain of Police for each police district, and such number of Lieutenants, Detective Sergeants, Patrol Sergeants, Desk Sergeants, Patrolmen and other employes as may be provided by ordinance.

"1732. General Superintendent—Office Created—Appointment.—There is hereby created the office of General Superintendent of Police. He shall be appointed by the Mayor, by and with the advice and consent of the City Council.

"1734. Management of Department—Appointment of Members.—The General Superintendent shall have the management and control of all matters relating to the Department, its officers and members. He shall appoint, according to law, all officers and members of said Department.

Which said ordinance relating to the appointment and qualifications of police officers was before then duly passed, adopted and promulgated, according to law, as an ordinance of said City of Chicago, by the City Council and Mayor of said City of Chicago, and was then and there a part of the laws in force in said City of Chicago; that said ordinance so passed, adopted and promulgated, also provided in and by another section thereof, the duties of the policemen, sergeants and members of the police force of said City of Chicago, which said section thereof is in words and figures as follows, to wit:

"1760. Police Duties—Power of Arrest.—The several members of the police force of the City of Chicago, when on duty, shall devote their time and attention to the discharge of the duties of their stations according to the laws and ordinances of the City and the rules and regulations of the Department, to preserve order, peace and quiet and enforce the laws and ordinances throughout

115 the city. They shall have power to arrest all persons in the city found in the act of violating any law or ordinance or aiding or abetting in any such liolating, and shall arrest any person found under circumstances which would warrant a reasonable man in believing that such person had committed or is about to commit a crime."

Which said section of said ordinance was then and there a part of the laws in force in said City of Chicago, and that the City Council of the said City of Chicago by its annual appropriation ordinance appropr-ated a sum of money for a certain number of policemen commonly known as sergeants and that the said Guy Biddinger was among the number of sergeants so provided for by said ordinance; that it was then and there the duty of the said Guy Biddinger to enforce the provisions of the statutes of the State of Illinois relating to confidence game and it was then and there the duty of said Guy Biddinger then and there to arrest, complain against, prosecute and appear as a witness against the violators of said statutes; that one Clarence Glass was then and there a violator of the statutes and was commonly known to many persons as a con man and had frequently committed the crime of confidence game in the said City of Chicago and was known to many persons as a pickpocket and thief and was engaged in confidence game as a means of livelihood; and that said Guy Biddinger then and there in the said City of Chicago knew the premises aforesaid.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present that the said Guy Biddinger then and there well knowing the premises and then and there contriving and intending the powers and duties of his said office of policeman, sergeant and member of the police force of the said City of Chicago and the trust and confidence reposed in him to violate, prostitute and

116 betray and contriving and intending then and there the powers and duties of his said office to discharge and perform contrary to law and with the intent and for the purpose of being influenced in his acts and doings in the performance of his said duty, to wit: The duty of enforcement of the statutes of the State of Illinois relating to confidence game then brought before him said Guy Biddinger in his official capacity as a policeman, sergeant and member of the police force of said City of Chicago and to then and there cause him the said Guy Biddinger to execute the powers in him vested as a policeman, sergeant and member of the police force of the City of Chicago as aforesaid and to do and perform said duty of him required with partiality and favor to the said Clarence Glass and contrary to the terms and provisions of the law relating to the offense of confidence game and to cause him the said Guy Biddinger in his official capacity as aforesaid to fail, refuse and neglect to arrest the said Clarence Glass and further to cause said Guy Biddinger to protect the said Clarence Glass from arrest and from prosecution contrary to the law then and there in said City of Chicago knowingly, corruptly and feloniously did take, accept and receive from said Clarence Glass on the fifteenth day of February in the year of our Lord one thousand nine hundred and nine

while he the said Guy Biddinger was then and there on duty as a policeman, sergeant and member of the police force of the said City of Chicago as aforesaid in the said City of Chicago aforesaid, a large sum of money, to wit; the sum of five hundred thirty dollars in money of the value of five hundred thirty dollars lawful money of the United States of America, as a bribe present and reward offered and given by the said Clarence Glass and by him, said Guy Biddinger, then and there taken, accepted and received with the unlawful, wicked and corrupt purpose and intent of influencing him the said Guy Biddinger, in his office aforesaid in his acts
117 and doings in his said official capacity of policeman, sergeant and member of the police force of said City of Chicago in the matter of the enforcement of the statutes of the State of Illinois relating to confidence game and to wickedly and corruptly cause him, said Guy Biddinger, to execute the powers in him vested as a policeman, sergeant and member of the police force as aforesaid and to perform his said duty of him required by law with partiality and favor to said Clarence Glass and to then and there induce and cause him the said Guy Biddinger in his office aforesaid to permit, authorize and allow said Clarence Glass to commit confidence game at divers times and places and to induce and influence him the said Guy Biddinger then and *then and* thereafter not to arrest nor cause to be arrested the said Clarence Glass upon charges of confidence game and to keep, care and protect said Clarence Glass from arrest and punishment and free, clear and exempt from police molestation, interference or attack while engaged in committing confidence game and particularly while engaged in committing confidence game in the City of Chicago and while engaged in unlawful and felonious occupations of divers kinds and nature and while engaged in any criminal pursuit in the City of Chicago.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present that the said Guy Biddinger since the tenth day of May in the year of our Lord, one thousand nine hundred and eleven and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Statute and against the peace and dignity of the *same* People of the State of Illinois.

(Signed) MACLAY HOYNE,
State's Attorney.

118 Term No. —. G. J. No. 15*a*. P. G. D. No. 8885. Criminal Court of Cook County, May Term, A. D. 191–. The People of the State of Illinois vs. Guy Biddinger. Indictment for Bribery. A True Bill. —— ——, Foreman of the Grand Jury. Witnesses: Ben Cooney, Clarence Glass, Benjamin Leeman, Thomas Lyons, Ike Kline, Tommy Thomas, Michael O'Donnell, C. P. Bertsche, Harry Steed, William Welch, Thomas Podolaski, Frank Hill, Shelby Singleton, August Donke. Filed May 5th, 1916. (Signed) Frank J. Walsh, Clerk. Bail $10,000.

119 STATE OF ILLINOIS,
Cook County, ss:

Of the May Term of the Criminal Court of Cook County, in said County and State, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that heretofore, to wit, on the thirtieth day of October in the year of our Lord one thousand nine hundred and eight one Guy Biddinger was a policeman and a member of the Police force and a sergeant thereof of the City of Chicago, and incorporated city there situate, in said County and State, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago; that the said Guy Biddinger theretofore was appointed as such policeman, sergeant and member of the police force as aforesaid under and by virtue of the laws of the State of Illinois and the ordinances of the said City of Chicago relating to the appointment and qualification of policemen, sergeants and members of the police force, which said ordinance of said City of Chicago relating to the appointment and qualification of policemen, sergeants and members of the police force of said City of Chicago is in words and figures as follows, to wit:

"1731. Department Established.—There is hereby established an Executive Department of the Municipal Government of the City which shall be known as the Department of Police, and shall embrace, the General Superintendent of Police, and Assistant General Superintendent of Police, a Secretary of the Department of Police, a Private Secretary to said General Superintendent, one Inspector of Police for each police division, one
120 Captain of Police for each police district, and such number of Lieutenants, Detective Sergeants, Patrol Sergeants, Desk Sergeants, Patrolmen and other employes as may be provided by ordinance.

"1732. General Superintendent—Office created—Appointment. —There is hereby created the office of General Superintendent of Police. He shall be appointed by the Mayor, by and with the advice and consent of the City Council.

"1734. Management of Department—Appointment of Members.—The General Superintendent shall have the management and control of all matters relating to the Department, its officers and members. He shall appoint, according to law, all officers and members of said Department."

Which said ordinance relating to the appointment and qualification of Police officers was before then duly passed, adopted and promulgated, according to law, as an ordinance of said City of Chicago by the City Council and Mayor of said City of Chicago, and was then

and there a part of the laws in force in said city of Chicago; that said ordinance so passed, adopted and promulgated, also provided in and by another section thereof, the duties of the policemen, sergeants and members of the police force of said City of Chicago, which said section thereof is in words and figures as follows, towit:

"1760. Police Duties—Power of Arrest.—The several members of the police force of the City of Chicago, when on duty, shall devote their time and attention to the discharge of the duties of their stations according to the law and ordinances of the City and the rules and regulations of the Department, to preserve order, peace
121 and quiet and enforce the laws and ordinances throughout the city. They shall have power to arrest all persons in the city found in the act of violating any law or ordinance or aiding or abetting in any such violating, and shall arrest any person found under circumstances which would warrant a reasonable man in believing that such person had committed or is about to commit a crime."

Which said section of said ordinance was then and there a part of the laws in force in said City of Chicago, and that the City Council of the said City of Chicago by its annual appropriation ordinance appropriated a sum of money for a certain number of policemen commonly known as sergeants and that the said Guy Biddinger was among the number of sergeants so provided for by said ordinance; that it was then and there the duty of the said Guy Biddinger to enforce the provisions of the statutes of the State of Illinois relating to confidence game and it was then and there the duty of said Guy Biddinger then and there to arrest, complain against, prosecute and appear as a witness against the violators of said statutes; that one Clarence Glass was then and there a violator of the statutes and was commonly known as a con man and had frequently committed the crime of confidence game in the said City of Chicago and was known to many persons as a pickpocket and thief and was engaged in confidence game as a means of livelihood; and that said Guy Biddinger then and there in the said City of Chicago knew the premises aforesaid.

122 And the Grand Jurors aforesaid upon their oaths aforesaid do further present that the said Guy Biddinger then and there well knowing the premises and then and there contriving and intending the powers and duties of his said office of policeman, sergeant and member of the police force of the said City of Chicago and the trust and confidence reposed in him to violate, prostitute and betray and contriving and intending then and there the powers and duties of his said office to discharge and perform contrary to law, and with the intent and for the purpose of being influenced in his acts and doings in the performance of his said duty, — wit: The duty of enforcement of the statute of the State of Illinois relating to confidence game, then brought before him said Guy Biddinger in his official capacity as a policeman, sergeant and member of the police force of said City of Chicago and to then and there cause him the said Guy Biddinger to execute the powers in him vested as a policeman, sergeant and member of the police force of the City of Chicago, as

aforesaid and to do and perform said duty of him required with partiality and favor to the said Clarence Glass and contrary to the terms and provisions of the law relating to the offense of confidence game and to cause him the said Guy Biddinger in his official capacity as aforesaid to fail, refuse and neglect to arrest the said Clarence Glass and further to cause said Guy Biddinger to protect the said Clarence Glass from arrest and from prosecution contrary to the law then and there in said City of Chicago knowingly, corruptly and feloniously did take, accept and receive from said Clarence Glass on the thirtieth day of October in the year of our Lord one thousand nine hundred and eight, while he the said Guy Biddinger was then and there on duty as a policeman, sergeant and member of the police force of the said City of Chicago as aforesaid in the said City
123 of Chicago aforesaid, a large sum of money, to wit: the sum of one hundred fifty dollars in money of the value of one hundred fifty dollars of lawful money of the United States of America, as a bribe, present and reward offered and given by the said Clarence Glass and by him, said Guy Biddinger, then and there taken, accepted and received with the unlawful, wicked and corrupt purpose and intent of influencing him the said Guy Biddinger in his office aforesaid in his acts and doings in his said official capacity of policeman, sergeant and member of the police force of said City of Chicago in the matter of the enforcement of the statutes of the State of Illinois relating to confidence game and to wickedly and corruptly cause him, said Guy Biddinger, to execute the powers in him vested as a policeman, sergeant and member of the police force as aforesaid and to perform his said duty of him required by law with partiality and favor to said Clarence Glass and to then and there induce and cause him the said Guy Biddinger in his office aforesaid to permit, authorize and allow said Clarence Glass to commit confidence game at divers times and places and to induce and influence him the said Guy Biddinger then and there and thereafter not to arrest nor cause to be arrested the said Clarence Glass upon charges of confidence game and to keep, save and protect said Clarence Glass from arrest and punishment and free, clear and exempt from police molestation, interference or attack while engaged in committing confidence game and particularly while engaged in committing confidence game in the City of Chicago and while engaged in unlawful and felonious occupations of divers kinds and nature and while engaged in any criminal pursuit in the City of Chicago.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present that the said Guy Biddinger since the tenth day of May in the year of our Lord one thousand nine hundred and
124 eleven and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Statute and against the peace and dignity of the *same* People of the State of Illinois.

(Signed) MACLAY HOYNE,
State's Attorney.

125 Term No. —. G. J. No. 17*a*. P. G. D. No. 8885. Criminal Court of Cook County, May Term, A. D. 191-. The People of the State of Illinois vs. Guy Biddinger. Indictment for Bribery. A True Bill. —— ——, Foreman of the Grand Jury. Witnesses: Ben Cooney, Clarence Glass, Benjamin Leeman, Thomas Lyons, Ike Kline, Tommy Thomas, Michael O'Donnell, C. P. Bertsche, Harry Steed, William Welch, Thomas Podolaski, Frank Hill, Shelby Singleton, August Donke. Filed May 5th, 1916. (Signed) Frank J. Walsh, Clerk. Bail $10,000.

126 STATE OF ILLINOIS,
County of Cook, ss:

Of the May Term of the Criminal Court of Cook County, in the said County and State, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois in the name and by the authority of the People of the State of Illinois, upon their oaths present that one Guy Biddinger, late of the County of Cook, on the fifteenth day of October in the year of our Lord, one thousand nine hundred and eight, unlawfully in said County of Cook in the State of Illinois aforesaid fraudulently and feloniously did obtain from one, Clarence Glass, a large amount of money, goods and personal property, to wit: one hundred current United States of America Treasury Notes of the denomination of one hundred dollars, of the value of one hundred dollars each; two hundred current United States of America Treasury Notes of the denomination of fifty dollars, of the value of fifty dollars each; one hundred current United States of America Treasury Notes of the denomination of twenty dollars each, of the value of twenty dollars each; one hundred current United States of America Treasury Notes of the denomination of ten dollars, of the value of ten dollars each; one hundred current United States of America Treasury Notes of denomination of five dollars, of the value of five dollars each; two hundred current United States of America treasury notes of the denomination of two dollars of the value of two dollars each; sundry current Bank bills, commonly called National Currency, issued by certain National Banks, the Banks of issue being to the said jurors unknown; of divers denominations, the denominations being to said jurors unknown; of the amount and value in all of one hundred fifty dollars; sundry current Bank Bills, commonly called Greenbacks, issued by the Treasury of the United States of America of divers denominations, the denominations being to the said Jurors unknown, of the amount and value in all of one hundred fifty dollars;
127 five hundred pieces of silver current coin of the United States of America, called one dollar, of the value of one dollar each, five hundred pieces of silver current coin of the United States of America, called half dollar, of the value of 50 cents each; five hundred pieces of silver current coin of the United States of America, called quarter dollar, of the value of twenty-five cents each; five hun-

dred pieces of silver current coin of the United States of America, called one dime, of the value of ten cents each; five hundred pieces silver coin of the United States of America, called half dime, of the value of five cents each; five hundred pieces of nickel current coin of the United States of America, called five cents, of the value of five cents each; one hundred pieces of gold current coin of the United States of America, called twenty dollars, of the value of twenty dollars each; one hundred pieces of gold current coin of the United States of America, called ten dollars, of the value of ten dollars each; one hundred pieces of gold current coin of the United States of America, called five dollars, of the value of five dollars each; one hundred pieces of gold current coin of the United States of America, called two dollars and fifty cents, of the value of two dollars and fifty cents each; one hundred pieces of gold current coin of the United States of America, called one dollar, of the value of one dollar each; the goods money and personal property of Clarence Glass by means and by use of the confidence game.

The Grand Jurors aforesaid, upon their oaths aforesaid, do further present that the said Guy Biddinger since the tenth day of May in the year of our Lord one thousand nine hundred and eleven, and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Statute, and against the peace and dignity of the said People of the State of Illinois.

(Signed) MACLAY HOYNE,
State's Attorney.

128 G. J. No. —. General No. —. Criminal Court of Cook County, — Term, A. D. 191—. The People of the State of Illinois vs. —— ——. Indictment for obtaining money and goods by means of the confidence game. A True Bill. —— ——, Foreman of the Grand Jury. Witness: —. Filed —— ——, 191—. —— ——, Clerk. Bail $—.

129 The Grand Jurors aforesaid, chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by authority of the People of the State of Illinois, upon their oaths aforesaid, do further present that one, Guy Biddinger, late of the County of Cook, on the fifteenth day of October, in the year of our Lord one thousand nine hundred and eight, in said County of Cook, in the State of Illinois aforesaid, one hundred current United States of America Treasury Notes of the denomination of one hundred dollars, of the value of one hundred dollars each; two hundred current United States of America Treasury Notes of the denomination of fifty dollars, of the value of fifty dollars each; one hundred current United States of America Treasury Notes of the denomination of twenty dollars, of the value of twenty dollars each; one hundred current United States of America Treasury Notes of the denomination of ten dollars, of the value of ten dollars each; one hundred current United States of America Treasury Notes of the denomination of five dollars, of the value of five dollars each; two hundred current United States of America Treasury Notes of the denomination of two dollars,

of the value of two dollars each; sundry current Bank Bills, commonly called National Currency, issued by certain National Banks, the Banks of issue being to the said jurors unknown, of the amount and value in all of one hundred fifty dollars; sundry current Bank Bills, commonly called Greenbacks, issued by the Treasury of the United States of America, of divers denominations, the denominations being to the said jurors unknown, of the amount and value in all of one hundred fifty dollars; five hundred pieces of silver current coin of the United States of America, called one dollar, of the value of one dollar each; five hundred pieces of silver current coin of the United States of America, called half dollar, of the value of fifty cents each; five hundred pieces of silver current coin of the
130 United States of America, called quarter dollar, of the value of twenty-five cents each; five hundred pieces of silver current coin of the United States of America, called one dime, of the value of ten cents each; five hundred pieces of silver current coin of the United States of America, called half dime, of the value of five cents each; five hundred pieces of nickel current coin of the United States of America, called five cents, of the value of five cents each; five hundred pieces of copper current coin of the United States of America, called one cent, of the value of one cent each; one hundred pieces of gold current coin of the United States of America, called twenty dollars, of the value of twenty dollars each; one hundred pieces of gold current coin of the United States of America, called ten dollars, of the value of ten dollars each; one hundred pieces of gold current coin of the United States of America, called five dollars, of the value of five dollars each; one hundred pieces of gold current coin of the United States of America, called two dollars and fifty cents, of the value of two dollars and fifty cents each; one hundred pieces of gold current coin of the United States of America, called one dollar, of the value of one dollar each; of the personal goods, money and property of Clarence Glass, then and there being found did then and there feloniously steal, take and carry away.

And the Grand Jurors aforesaid, upon their oaths aforesaid, *fo* further present that the said Guy Biddinger since the tenth day of May in the year of our Lord, one thousand nine hundred and eleven and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Statute, and against the peace and dignity of the sa*m*d People of the State of Illinois.

(Signed) MACLAY HOYNE,
State's Attorney.

131 Gen. No. 8886. G. J. No. 18 A. Criminal Court of Cook County, May Term, A. D. 1916. The People of the State of Illinois vs. Guy Biddinger. Indictment for Confidence Game, etc. A True Bill. (Signed) John F. Gubbins, Foreman of the Grand Jury. Witnesses: Benjamin Leeman, Clarence Glass, Thomas Lyons, Ike Kline, Tommy Thomas, Michael O'Donnell, C. P. Bertsche, Harry Steed, William Welch, Ben Cooney, Thomas Podolaski, Frank Hill, Shelby Singleton, August Donke. Filed May 5, 1916. (Signed) Frank J. Walsh, Clerk. Bail $5,000.

132 STATE OF ILLINOIS,
Cook County, ss:

Of the May Term of the Criminal Court of Cook County, in said County and State, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

The Grand Jurors, chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, upon their oaths present that one Guy Biddinger late of the County of Cook, on the second day of September, in the year of our Lord one thousand nine hundred and ten, in said County of Cook, in the State of Illinois aforesaid, was a policeman and a member of the police force, and a sergeant thereof, of the City of Chicago, County and State aforesaid, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago, County and State aforesaid.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present that the said Guy Biddinger then and there having in his legal custody one, Michael O'Donnell before the conviction of the said Michael O'Donnell did unlawfully, corruptly and voluntarily suffer and permit the said Micheal O'Donnell to escape and go at large.

And the Grand Jurors aforesaid upon their oaths aforesaid, do further present that the said Guy Biddinger since the tenth day of May in the year of our Lord, one thousand nine hundred and eleven and from thence hitherto, was not usually and publicly a resident within this State of Illinois, contrary to the Statute, and against the peace and dignity of the *same* People of the State of Illinois.

MACLAY HOYNE,
State's Attorney.

133 G. J. No. 19 A. Term No. —. P. G. D. No. 8887. Criminal Court of Cook County, May Term, A. D. 1916. The People of the State of Illinois vs. Guy Biddinger. Indictment for Escape. A True Bill. John F. Gubbins, Foreman of the Grand Jury. Witnesses: Ben Cooney, Clarence Glass, Benjamin Leeman, Thomas Lyons, Ike Kline, Tommy Thomas, Michael O'Donnell, C. P. Bertsche, Harry Steed, William Welch, Thomas Podolaski, Frank Hill, Shelby Singleton, August Donke. Filed May 5th, 1916. (Signed) Frank J. Walsh, Clerk. Bail $5,000.

134 Each of the foregoing indictments bore annexed thereto certificates of exemplifications in the following form:

STATE OF ILLINOIS
County of Cook, ss:

I, Frank J. Walsh, Clerk of the Criminal Court of Cook County, in said County and State, do hereby certify the above and forego-

ing to be a true, perfect and complete copy of Indictment in a certain cause now pending in said Court, wherein The People of the State of Illinois are Plaintiffs, and Guy Biddinger is Defendant.

Witness, Frank J. Walsh, Clerk of said Court, and the Seal thereof, at Chicago, in said County, this Fifth day of May, 1916.

[SEAL.] (Signed) FRANK J. WALSH, *Clerk.*

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Richard E. Burke, Judge of the Superior Court of Cook County, and Ex-Officio Judge of the Criminal Court of Cook County, in said State, do hereby certify that Frank J. Walsh, whose name is subscribed to the above certificate of attestation, now is, and was at the time of signing and sealing the same, the Clerk of the Criminal Court of Cook County, and keeper of the Records and Seal thereof, duly elected and qualified to office; that full faith and credit are, and of right ought to be, attached to all his official acts as such, in all Courts of Records and elsewhere; and further, that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers in Chicago, in said County, Fifth day of May, A. D. 1916.

(Signed) RICHARD E. BURKE, [SEAL.]
Judge of the Superior Court of Cook County and ex-Officio Judge of the Criminal Court of Cook County.

135 UNITED STATES OF AMERICA,
State of Illinois, Cook County, ss:

I, Frank J. Walsh, Clerk of the Criminal Court of Cook County, in and for the County aforesaid, do hereby Certify that Richard E. Burke, whose name is subscribed to the foregoing certificate of attestation, now is, and was, at the time of signing and sealing the same, Judge of said Superior Court of Cook County, and Ex-Officio Judge of the Criminal Court of Cook County, and was duly elected, commissioned and qualified to office; that full faith and credit are, and of right ought to be, given to all his official acts as such, in all Courts of Record in the United States and elsewhere, and that his attestation is in due form of law and by the proper officer.

Given under my hand and the seal of said Court, at Chicago, in said County, this Fifth day of May, A. D. 1916.

(Signed) FRANK J. WALSH,
[SEAL.] *Clerk of the Criminal Court of Cook County.*

136 Requisition of The Governor of Illinois for Guy Biddinger, Charged with Bribery, Confidence Game, and Voluntarily Permitting a Prisoner to Escape. Received —— —, 191–. Warrant Issued —— —, 191–.

136½ Exhibit No. 1 of November 11, 1916.

To His Excellency Edward F. Dunne, Governor of Illinois:

Your petitioner, State's Attorney for the County of Cook, State of Illinois, would represent unto your Excellency that Guy Biddinger stands charged by the accompanying complaint, warrant and affidavits with the crime of Bribery committed in the City of Chicago, County of Cook and State of Illinois, on or about the 1st day of August, 1909.

That on or about the 1st day of May, 1911, the said Guy Biddinger fled from the State of Illinois, and has not been usually and publicly a resident within the said State of Illinois from the said 1st day of May, 1911, and has been without the borders of the State of Illinois since the said 1st day of May, 1911, and is now, your petitioner verily believes, in the County of New York, in the State of New York, fugitive from justice of this State, and the grounds of such belief are as follows: Information submitted to your petitioner by affidavits properly sworn to and by statements made to your petitioner under oath.

Wherefore your petitioner prays that a requisition may issue upon the Governor of the said State of New York, and that Patrick J. Murphy, of the City of Chicago, County of Cook and State of Illinois, may be appointed Messenger of the State of Illinois, to go after, receive and return the said fugitive to the County of Cook, State of Illinois, for trial.

Your petitioner further certifies that in his opinion the ends of public justice require that the said Guy Biddinger be brought to this State for trial at the public expense; that he believes he has sufficient evidence to secure his conviction.

(Signed) MACLOY HOYNE,
State's Attorney for Cook County, Illinois.

137 Exhibit No. 1 of November 11, 1916.

I, Shelby M. Singleton, first being duly sworn, do solemnly declare that the facts set forth in the foregoing petition are true, and that a requisition for the above named fugitive is not sought for the purpose of collecting a debt, to allow any person to travel at the expense of the State, or to answer any private end whatever, and shall not be used for any of said objects.

(Signed) SHELBY M. SINGLETON.

Subscribed and sworn to before me this 13th day of April, A. D., 1916.

(Signed) FRANK J. WALSH, [SEAL.]
Clerk of the Criminal Court.

I, John H. Williams, Acting County Judge of Cook County, State of Illinois, do hereby certify that the ends of justice require the return of Guy Biddinger.

(Signed) JOHN H. WILLIAMS,
Acting County Judge.

138 Exhibit No. 3 of November 11, 1916.

Exhibit No. 2 of November 11, 1916.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

Ike Kline, being first duly sworn, on oath says that he is a resident of the City of Chicago, County of Cook and State of Illinois; that he has known Guy Biddinger for period of about ten years, when he was a member of the Chicago Police Department. That said Guy Biddinger left the City of Chicago about the 1st day of May 1911, and he is now located in the City of New York. That affiant on the 1st day of May 1911, with one Louis Gazolla was in Eddy Shannon's saloon at the Northwest corner of 12th Street and Laflin Street, in the City of Chicago, Cook County, Illinois, and that the said Guy Biddinger placed the said Louis Gazolla and affiant under arrest upon a charge or larceny; that is to say for picking pockets and working the crowds in and around the street cars. As Gazolla and affiant were leaving the saloon, affiant gave to the said Guy Biddinger the sum of $25. in currency, and thereupon the said Guy Biddinger permitted both Gazolla and affiant to go free, and they were no longer under arrest, and the payment of the sum aforesaid not only covered the immediate release, but was for protection against prosecution by reason of having committed the crimes of larceny in the picking of pockets of citizens traveling upon street cars in the city of Chicago.

On another occasion, as far back as June, 1907, Biddinger had arrested Gazolla and affiant at Halstead Street and Harrison Street in the City of Chicago, and had released and discharged them from custody on their promise to leave the sum of $25. for him with a saloon keeper named John Kelleher, in the latter's saloon
139 at the Southeast corner of Madison and Green Streets in the City of Chicago. Affiant put $25 in currency in an envelope and handed the same to the said John Kelleher with instructions to Kelleher to deliver the same to Guy Biddinger, and affiant was never thereafter arrested or prosecuted upon the charges upon which the said Guy Biddinger had originally arrested affiant.

[SEAL.] (Signed) IKE KLINE.

Subscribed and sworn to before me this 12th day of April, A. D., 1916.

(Signed) FRANK P. DANISCH, *Clerk.*

140 STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

Ike Kline of 419 N. Halstead Street Chicago, Illinois, who prosecutes in the name and by the authority of the people of the State of Illinois, complains to Hon. Jacob H. Hopkins one of the judges of the Municipal Court of Chicago and being duly sworn and examined on oath states that Guy Biddinger on the first day of May A. D. 1911 at the City of Chicago in the county aforesaid was a policeman and a member of the police force and a sergeant thereof of the City of Chicago, an incorporated City there situate, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago.

That the said Guy Biddinger then and there having in his legal custody one Louis Gozolla and one Ike Kline before the conviction of the said Louis Gozolla and said Ike Kline then and there while said Louis Gozolla and said Ike Kline were under arrest unlawfully corruptly and voluntarily did suffer and permit the said Louis Gozolla and Ike Kline the prisoner in the legal custody of the said Guy Biddinger to escape and go at large, contrary to the statute and against the peace and dignity of the *same* people of the State of Illinois.

And that he the said Guy Biddinger has not been usually and publicly resident within the State of Illinois from the First day of May 1911, and has been without the borders of the State of Illinois since said first day of May 1911.

141 This complainant further says that he has read the foregoing and that the matters and things therein set forth are true and he further says that the crime above charged was committed and that he has just and reasonable grounds to believe that the said Guy Biddinger committed said offense.

Wherefore the said Ike Kline prays a warrant may issue against the said Guy Biddinger according to law.

IKE KLINE.

Subscribed and sworn to before me this 12th day of April, A. D. 1916.

[SEAL.] JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

I have examined the within complaint and the complainant and am satisfied that there is probable cause for filing the same. Leave

is hereby granted to file it and it is ordered that a warrant issue against the accused.

Bail fixed at $2,500.

JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

142 Exhibit No. 1 of November 11, 1916.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

James M. Markham, being duly sworn according to law on oath, says that he is head clerk of the detective bureau of the city of Chicago; that he has been connected in a clerical capacity with the Detective Bureau of the City of Chicago, during the year 1911, and prior thereto, and since.

That Guy Biddinger, above named defendant, was at one time a member of the Police force of the City of Chicago; that he left Chicago to take a position with the Burns Detective Agency some time in 1911; to the best of affiant's recollection in the Spring of 1911; and that since that time, said Biddinger has not resided in the City of Chicago, or in the State of Illinois.

(Signed) JAMES M. MARKHAM.

Subscribed and sworn to before me this 13th day of April, A. D., 1916.

(Signed) FRANK P. DANISCH,
[SEAL.] *Clerk Municipal Court of Chicago.*

143 Exhibit No. 1 of November 11, 1916.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

Frank T. Hill, being duly sworn, on his own oath says: That the said Frank T. Hill is the brother-in-law of Lulu Biddinger, formerly the wife of the said Guy Biddinger and that the said Katherine Hill is a sister of Lulu Biddinger, and that they each of them appeared as witnesses for the said Lulu Biddinger and gave their testimony in support of the bill of complaint filed by Lulu Biddinger against the said Guy Biddinger, in and by which said bill the said Lulu Biddinger prayed for a divorce from the said Guy Biddinger; that each of them testified on the hearing that they knew the circumstances attending Guy Biddinger's leaving Chicago, and that the said Guy Biddinger left Chicago about the 10th day of May, 1911, and that he said prior to leaving that as soon as he got located in New York he would send for the said Lulu Biddinger, but that said Lulu Biddinger did not hear from him for about four months after he left Chicago for New York; that the said Guy Biddinger went to the City of New York in the employ of the Burns Detective Agency about the 10th day of May, 1911, and that Lulu Biddinger received a letter from him about four months thereafter stating in effect that he, Guy Biddinger, was dissatisfied with married life and wanted a divorce and that there was no law compelling a man to live with a woman if he did not want to, and that thereafter, about the 13th day of January, 1912, the said Lulu Biddinger received another letter

144 from the said Guy Biddinger to the same effect, and they severally say that the said Lulu Biddinger resided from the 10th day of May, 1911, down to the time of the hearing of said divorce bill of complaint, at the residence of the affiants at 1940 Warner Avenue, Chicago, Illinois, and that she lived separate and apart from said Guy Biddinger during all that time.

That said Katherine Hill saw a letter that was received from the said Guy Biddinger about three or four months after he left Chicago on May 10, 1911, in which he said that he was tired of married life and that his wife should seek a divorce.

The said Guy Biddinger has not been a resident of Chicago, to my knowledge, since the 10th day of May, 1911, but has been engaged

in business in the City of New York, State of New York, since that time.

(Signed) FRANK T. HILL.

Subscribed and sworn to before me, this 13th day of April, 1916.

(Signed) FRANK P. DANISCH,
FRANK P. DANISCH,
Clerk Municipal Court of Chicago.

145 Exhibit No. 1 of November 11, 1916.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

Patrick J. Cooney, being first duly sworn, on oath says that he is a resident of the city of Chicago, County of Cook and State of Illinois; that he is a member of the bar of the City of Chicago, and has been practicing at that place since 1915; that he examined the files in the case of Lulu Biddinger versus Guy Biddinger, General Number 303,007, Term Number 4290 in the Superior Court of Cook County, and particularly examined the bill for divorce, the answer of the said Guy Biddinger and the testimony given on the hearing of said cause.

That in and by her bill Lulu Biddinger set up that she was lawfully married to the said Guy Biddinger on the 18th day of August, A. D., 1910, and lived with him until the 10th day of May, A. D. 1911, on which day the defendant Guy Biddinger wilfully deserted and absented himself from the said Lulu Biddinger; that the answer of the said Guy Biddinger filed in said cause admits that the said Guy Biddinger was married to the said complainant on the day and date set out in her said bill of complaint and that they separated on or about the day set up in the bill of complaint.

That to support the issues on the hearing, Lulu Biddinger appeared on her own behalf, and on oath said in answer to interrogatories, as follows:

"Q. When did you separate?
"A. May 10, 1911.
"Q. Did you leave him or did he leave you?
"A. He left me.
"Q. Under what circumstances? Just tell in your own way.

"A. Well, he was employed by the Burns Detective Agency and he made his headquarters in New York and he said when he got settled there he would send for me, which he never did.

"Q. When was that?

"A. He left for New York May 10, 1911.

"Q. Did he send for you?

"A. No sir, he did not.

"Q. When did you next hear from him?

"A. About four months after that.

146 "Q. How did you hear from him?

"A. By mail.

"Q. What was the contents of that letter?

"A. He said married life was not for him.

* * * * * * *

"Q. When did you next hear from him?

"A. About four or five months after that.

"Q. I show you this letter, dated January 13, 1912. Is this the letter that you have just referred to?

"A. Yes, this is the letter."

(Quotation from letter:)

"But I thought in all fairness to you that I ought to explain to you that I never intended to live in Chicago again, or with you or any other woman, so you could make your plans and do what you thought was best."

(NOTE.—From the contents, it is apparent that the writer of the letter is again communicating what he had told Lulu Biddinger in his first letter, written, about September, 1911.)

"Q. Have you been living separate and apart from Mr. Biddinger since May 10, 1911?

"A. Yes.

"Q. Have you seen him since then?

"A. No, I have not."

The other witnesses appearing on said hearing, namely, Frank T. Hill and Catherine Hill, support the testimony of the complainant, and Catherine Hill testified:

"Q. Do you know when Mr. Biddinger left for New York?

"A. Yes, May 10, 1911.

"Q. Do you know what the arrangement was between Mr. and Mrs. Biddinger at that time?

"A. Yes, he was sent to New York by the Burns Detective Agency, and he said after he got settled in New York he would send for her, which he never did.

"Q. Did you ever see a letter she got from him after he went to New York?

"A. Yes, sir.

"Q. When was that?

"A. About three or four months after he left. He said in that letter that he was tired of married life, that there was no law com-

pelling a man to live with a woman he did not care for and she could ask a divorce.

"Q. Has Mrs. Biddinger been living at your home ever since then?

"A. Yes.

"Q. How long?

"A. Since the time he left her on the 10th day of May, 1911."

Affiant says that the quotations hereinbefore set forth are an exact copy of the questions asked and the answers made as shown by the transcript of testimony in said cause.

And further affiant saith not.

(Signed) PATRICK J. COONEY.

Subscribed and sworn to before me this 13th day of April, A. D., 1916.

[SEAL.] (Signed) FRANK P. DANISH, *Clerk.*

147 Exhibit No. 1 of November 11, 1916.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

John R. Herren, being first duly sworn, on oath says that he is familiar with the charges preferred against one Guy Biddinger, who was formerly a member of the Police Department of the City of Chicago, growing out of the transactions of the said Guy Biddinger with confidence men, pickpockets and thieves in the City of Chicago and the system of protection and extortion operated by him as a policeman.

Affiant says that applications for extradition have been made upon a larceny charge, upon a bribery charge and upon a charge for unlawful escape, which are but three of 51 complaints now on file against the said Guy Biddinger in the Municipal Court of the City of Chicago.

Affiant says that the larceny complaint rests upon the following state of facts: Guy Biddinger, while he was a member of the police force of the City of Chicago, arranged with William Quinn, a saloonkeeper, to go to the city of Waukegan, to attend a prize fight and Quinn promised to have $1000 in cash to bet on the fight. Thereupon Biddinger arranged with Benjamin Leeman, a well-known pickpocket, to steal the money while Biddinger and Quinn were on

the way to the fight. Leeman, with several others, surrounded Quinn and began shoving him and Biddinger himself joined in the jostling, to the material assistance of Leeman and his mob. Quinn did not have $1000 but did have $50 and the pocketbook and that amount was stolen, and of this sum Leeman gave Biddinger $20 in currency from the pocketbook.

Leeman's testimony is to the effect that in many instances he paid
Biddinger sums ranging from $10 to $50 and that he was
148 continually giving him money. On one occasion Leeman was
arrested by Biddinger with several other men at William Donohue's saloon at Clark street near Ohio street in the City of Chicago and was taken to the Detective Bureau and placed in a cell. Biddinger came to the cell and demanded that Leeman give him $20 to book him and Leeman did so. The original arrest of Leeman was for larceny, that is, for picking pockets (in most cases a felony) but as soon as the $20 were paid to Biddinger he was at once booked for disorderly conduct, a minor city charge, and released on bond and later at the police court he was discharged.

On another occasion a man named John Hardy was arrested as a fugitive from Washington, D. C., on a charge of larceny and Leeman paid to Biddinger the sum of $50 to prevent the return of the said John Hardy to Washington.

The affidavit of William Quinn in support of the application for extradition, shows that Biddinger did arrange with him, Quinn, to attend the prize fight and that he was shoved and jostled while with Biddinger and his pocketbook worth $2.00 was stolen, together with $50 in currency that was in the same. This complaint charges a felony.

Complaint No. 1 on file in the Municipal Court of Chicago against Guy Biddinger charges him with feloniously altering, withdrawing, corrupting and destroying a warrant, the process of the Municipal Court, and it rests on the following state of facts:

Joseph Weil, an expert confidence man, who had been convicted for confidence games and had served time in Joliet, operated a swindling scheme upon a man named Charles Born and obtained $20. Born swore out a warrant against Joseph Weil and one Clarence Glass, and Biddinger called up Glass on the telephone and told him to come and see him and Glass went to his house on the South side.

While they sat on the swing in the rear of the house Biddinger
149 showed to Glass the warrant that had issued for the arrest of
Glass and Weil. Glass told Biddinger that he did not have any money at present but that he was going to skin a sucker in a few days and that when he had done so he would give him, Biddinger, $50.00 to fix the Born case, and Biddinger accepted the promise of Glass and tore up the warrant in the presence of Glass.

The sucker referred to by Glass when he told Biddinger he would give him $50 from the proceeds of the swindle, was a man named Podolaski who was living in Maywood, a suburb of Chicago. Glass took Podolaski to Burlington, Iowa. and obtained from him $3000 by means of a confidence game swindling operation. This was in the form of a fake prize fight in which Glass was one of the fighters.

Glass expected that Podolaski would complain to the Detective Bureau of Chicago and he gave Biddinger $300 in cash, which included the $50 promised to him in the Born case and $250 for fixing the Podolaski case if it came up. It appears that Podolaski did go to the Detective Bureau in Chicago and was literally thrown out and was told to go to Iowa to get his money back. The charge against Biddinger of destroying a warrant is a felony under the law of Illinois.

Complaint No. 3 charges Biddinger with feloniously obtaining $200 from Joseph Weil, a confidence man, by means and by use of the confidence game. How Biddinger worked a con game on a con man is stated as follows: In 1908, Joseph Weil resided at the south east corner of Garfield boulevard and Loomis street and had just returned from the University Hospital after a siege of typhoid fever when Guy Biddinger came to his apartment and said that he had a warrant for Weil's arrest. Mrs. Weil pleaded with Biddinger not to disturb him and stated that he had had a relapse and to remove the sick man would be very dangerous. Biddinger roughly stated that he had been sent out there and was told to bring Weil in, and he offered to call a police ambulance and have Weil taken to the Cook County jail. Weil explained that he was under bond and that there was absolutely no danger of his running away, and offered to tell him when he was well so that he could effect the arrest, and Biddinger stated that that would not do and that he would proceed at once to serve his "warrant." Weil told him that he was willing to pay him money to allow him to remain at home. Weil, had $240 in currency in the house at the time, of which sum Guy Biddinger took $200 and left, and that was the last of the affair. It has since developed that Biddinger had no warrant of any kind or nature against Weil at that time.

Complaint No. 4 is a felony charge, based upon Biddinger's acceptance of a bribe to protect Glass and Weil, confidence men, from arrest upon confidence game warrants sworn out in the Charles Born case and in the Podolaski case.

Complaint No. 5 is a felony, charging the acceptance of a bribe by Guy Biddinger to protect Tommy Thomas against prosecution upon a charge of receiving stolen property. Biddinger brought Tommy Thomas to the saloon of Barney Bertsche during the year 1910 and told Bertsche that he, Biddinger had the goods on Thomas, and that the suit of clothes that Thomas was then wearing was stolen in a burglary. Biddinger said to Bertsche in the presence of Thomas that if he wanted to pay $150 that he would let him go. Tommy Thomas later gave Bertsche $100 which Bertsche gave to Biddinger, and Thomas said that he would bring the other $50 down the following day, which he did, and Bertsche gave it to Biddinger, making $150 that Bertsche paid Biddinger to protect Tommy Thomas against prosecution on the charge of receiving stolen property, in a case where Thomas had the stolen suit of clothes on his back. Bribery is a felony under the law of Illinois.

Complaint No. 6 is a charge that Biddinger feloniously accepted a bribe from Clarence Glass of $530 to protect Glass and Jo-

151 seph Weil from prosecution for their crime of conspiracy to obtain $4000 from Otto Grabbe, a former Chicago saloonkeeper, by means of a confidence game. Weil and Glass made all the arrangements for a fake prize fight and worked upon Grabbe's cupidity to the point that he took $4000 with him to Galesburg where the phoney prize fight was held, and by a clever confidence game they got away with Grabbe's money. Biddinger arrested Clarence Glass and took him to the Central Station and showed him the record of the complaint and told Glass that he wanted $2000 of the money to fix the case. Weil and Glass refused to pay and the two confidence men and the police officer talked it over at length with the result that Glass paid Biddinger $530 as a bribe to fix the prosecution. Otto Grabbe was sent for and Biddinger produced another man and presented him to Grabbe, saying "This is Clarence Glass. Do you recognize him?" Of course he could not, and this delayed the case for a long time. Glass testifies also that on another occasion he gave Biddinger $1000 in cash to fix a sucker named Schroeder who had been the victim of a confidence game operation, and to secure his freedom from arrest. Glass paid the money and was never punished for that offense. Shortly after the payment Biddinger asked Glass why he did not work in Chicago under his protection because Biddinger was detailed on confidence men and would get all the kicks and in this way would be able to take care of him, and Biddinger and Glass made an agreement under which Glass paid Biddinger $25.00 a week for protection from arrest and to help in every way possible to escape punishment. This money was paid for about eight weeks when a new arrangement was entered into under which Glass was to give him 10% of the money secured from suckers by means of confidence game.

Complaint No. 7 is a charge of feloniously accepting a bribe from Ike Kline, a well-known pickpocket in the sum of $25 on
151½ May 1st, 1911, about the time that Biddinger left Chicago, to protect him, Ike Kline and Louis Gazollo, another well-known pickpocket in their depredations. Gazollo and Kline about May 1st, 1911, were in Eddie Shannon's saloon at the northwest corner of 12th street and Laflin street when Biddinger happened along and arrested both of them, and on leaving the saloon Kline gave Biddinger $25 and Biddinger immediately allowed Gazzolo and Kline to go at large and nothing further was ever done with reference to the matter.

It appears from the testimony that Ike Kline and Louis Gazzolo as far *as* back as June of 1907, left $25 in an envelop- with John Kelleher at his saloon at Madison and Green streets, Chicago, with instructions to him to give the same to Biddinger. Biddinger had arrested Gazzolo and Kline at Halsted and Harris streets shortly before and had allowed them to go upon their promise to leave this money for him, Biddinger. Both Gazzolo and Kline are well-known pickpocket operators in Chicago.

Complaint No. 8 is a charge that Biddinger feloniously accepted from Patrick McMahon alias Patty Rags, the sum of $50 as a bribe to purchase his freedom from an arrest made by Biddinger on a

charge of pocket picking. The larceny warrant was executed by Biddinger, who arrested Patty Rags at 18th and State Street in a restaurant, and he locked him up. Before the case was called in police court Patty Rags paid the $50 to Biddinger and Biddinger was able to turn him out. Patty Rags was not prosecuted for the larcenies committed by him and he was allowed to escape by Biddinger. Patty Rags is an internationally known pickpocket, and the payment of the money in this particular instance is within the knowledge of G. C. Francke of the City of Chicago.

It appears from the testimony that Oscar Jackson, Kid Cleary, one Harper, Butch Smith, Butch Carroll, Danny Vetters, Eddie Mack, John Hoffman, Al Jacobson and other well known pickpockets
152 repeatedly left money at the saloon of G. C. Francke at 2101 South State street, Chicago, to give to Biddinger for protection against arrest. Francke often saw them put the money in envelopes and thereupon they handed it to Francke with the instruction that it be given to Biddinger when he called, and he always appeared shortly thereafter and he gave it to Biddinger.

Francke says that a woman named Gertie Howard alias Gertie Tate frequently committed larceny, and that Biddinger when he would hear that she had stolen a sum of money from any one, would take part of the proceeds of the larceny.

It appears from the testimony that on New Year's Eve of the year 1909 and New Year's morning of 1910, Oscar Jackson, Kid Cleary, Al Jacobson and other pickpockets were working in the crowds in front of the Morrison Hotel under Biddinger's personal protection, and that he would not permit the operators to leave his immediate supervision. The proceeds of the evening's work by the pickpockets amounted to $600 and one-half of it was paid to Biddinger for his protection during the night. After the division of the money the pickpockets had no more than gone around the corner when Biddinger sent two other detectives after them and they took away from the pickpockets the balance of the money, and the pickpockets went home without anything from the larcenies committed by them under Biddinger's supervision.

Complaint No. 9 is based upon the feloniously acceptance of a bribe of $50 from Oscar Jackson, a pickpocket, for the protection on January 1st, last mentioned.

Complaint No. 10 is based upon another bribe of $50 paid to Biddinger by Oscar Jackson about September 1st, 1910.

Complaint No. 11 is based upon a bribe of $50 paid by Kid Cleary to Biddinger on or about September 1, 1910.

Complaint No. 12 is upon the felony of receiving a bribe in the sum of $40 from Kid Cleary under date of January 1, 1910, and is part of the proceeds of the work done in front of the Morrison Hotel.

153 Complaint No. 13 is a bribe of $50 paid to Biddinger about September 1, 1910, by one Harper, a pickpocket.

Complaint No. 14 is upon a bribe of $30 paid by Harper to Biddinger on January 1, 1910.

Complaint No. 15 is based upon a payment of $25 as a bribe about October 1st, 1910, by Butch Smith.

Complaint No. 16 is upon a payment of $50 by Butch Carroll.

Complaint No. 17 charges Biddinger with feloniously receiving $50 from Danny Vetters, a well-known pickpocket.

Complaint No. 18 charges bribery in the sum of $35 paid by Eddie Mack, another pickpocket.

Complaint No. 19 charges the felony of receiving $50 from Johnny Hoffman as a bribe.

Complaint No. 20 charges the payment of $25 by Michael O'Donnell to Guy Biddinger in 1910, and the testimony shows that O'Donnell was walking south on State street and met Biddinger and Biddinger told him he was going to place him under arrest and that O'Donnell stated that he was not doing anything and that he did not want to be locked up, and he offered to leave $35 for Biddinger in some place and asked Biddinger where to leave it. Biddinger said "Leave it with Barney Bertsche," a saloon keeper on Fifth Avenue, and O'Donnell did leave the $25 with Bertsche for Biddinger, and Biddinger let him go on the promise that he would leave the $25 and he never molested O'Donnell thereafter. This testimony is supported by two witnesses, and Bertsche remembers the incident very positively.

Complaint No. 21 is based upon the payment of $50 as a bribe to Biddinger which was paid by Benjamin Leeman the pickpocket who robbed William Quinn, a saloonkeeper, with the active assistance of Biddinger in the larceny. Each of the parties who paid the bribes in complaints 9 to 21, inclusive, are well-known pickpockets, confidence men and thieves.

154 Complaints 22 to 36, inclusive, are predic-ted upon Section 89 of the Criminal Code, which makes it a misdemeanor for an officer having a prisoner in his legal custody to unlawfully, corruptly, and voluntarily suffer and permit the prisoner to escape and go at large.

Complaints 37 to 51, inclusive, are based upon Section 83 of the Criminal Code, which makes it a misdemeanor for an officer to unlawfully, wilfully and corruptly refuse to confine a prisoner charged with and placed under arrest upon a charge of crime, thereby effecting the escape of the prisoner.

The persons arrested in every instance were pickpockets, thieves or confidence men and in every case where a bribe was paid as set forth in complaints 9 to 21, inclusive, ranging in the several cases from $25 to $50 the criminals were allowed to go at large and to escape and were not prosecuted. Only a part of the crimes committed by Biddinger are made the basis of formal charges in the complaints. Numerous other instances of the payment of bribes to Biddinger and of the protection of the thieves are available.

From the testimony it appears that Biddinger received $200 in a check to lay off on a prosecution against George W. Jackson. Also, that Biddinger collected large sums from the proprietors of houses of prostitution in the old red light district in Chicago, as protection money, and that Ollie Davis, Roy Jones, Sappho Joe, Harry Hopkins, Charley Light, Edward and Louis Weiss, Fred Train, Joe Jor-

dan, Joe Friedman and Witty Cunningham, all well known and notorious keepers of immoral resorts during that time, each are said to have given Biddinger money for protection against arrest and prosecution by reason of their immoral business.

The complaint upon which the extradition is predicated is but one of fifty-one formally filed in the Municipal Court, and the prosecution of the said Guy Biddinger will proceed upon each of
155 the fifty-one if the application for his extradition be granted.

The said Buy Biddinger left Chicago on or about May 1st, 1911, and has been continuously without the borders of the State of Illinois since that date, and he has not been usually and publicly resident of the State of Illinois since May 1st, 1911; that the charges formally made are but a part of a very large number of crimes committed by said Biddinger in the City of Chicago, County of Cook and State of Illinois, while the said Biddinger wore the uniform of a police officer and was a protector of the people under the law of the State of Illinois. The foregoing statements are based on complaints and affidavits submitted to the State's Attorney.

(Signed) JOHN R. HERREN,
Assistant States Attorney.

Subscribed and sworn to before me this 13th day of April, A. D., 1916.

(Signed) FRANK J. WALSH, [SEAL.]
Clerk of the Criminal Court.

These same four affidavits were each contained in two other folders and were offered in evidence and were marked "Exhibits 2 & 3" respectively.

156 State of Illinois.

Executive Department.

The Governor of the State of Illinois to the Governor of New York:

Whereas, it appears by the papers required by the Statutes of the United States which are hereunto annexed, and which I certify to be authentic and duly authenticated in accordance with the Laws of this State, that Guy Biddinger stands charged with the crime of Bribery which I certify to be a crime under the Laws of this State, committed in the County of Cook in this State, and it having been represented to me that he has fled from the justice of this State and has taken refuge in the State of New York.

Now Therefore, pursuant to the provisions of the Constitution and the Laws of the United States in such case made and provided, I do hereby require that the said Guy Biddinger be apprehended and delivered to Patrick J. Murphy who is hereby authorized to receive and convey him to the State of Illinois, there to be dealt with according to Law.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of State, at the Capitol in the City of Springfield, this 14th day of April, A. D., 1916.

[SEAL.] (Signed) E. F. DUNNE.

By the Governor,
(Signed) LEWIS G. STEVENSON,
Secretary of State.

157 STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

Christian P. Bertsche of 5908 Magnolia Avenue, Chicago, Illinois, who prosecutes in the name and by the authority of the people of the State of Illinois, complains to Hon. Jacob H. Hopkins, one of the Judges of the Municipal Court of Chicago, and being duly sworn, and examined on oath states that Guy Biddinger, on the first day of August A. D. 1909 at the City of Chicago in the county aforesaid was a policeman and a member of the police force and a sergeant thereof of the City of Chicago, an incorporated city there situate, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman, sergeant and member of the police force of said City of Chicago; that the said Guy Biddinger theretofore was appointed as such policeman, sergeant and member of the police force as aforesaid under and by virtue of the laws of the said State of Illinois and the ordinances of the said City of Chicago relating to the appointment and qualification of policemen, sergeants and members of the police force, which said ordinance of said City of Chicago relating to the appointment and qualification of policemen, sergeants and members of the police force of said City of Chicago is in words and figures as follows, to wit:

158 "1731. Department established.—There is hereby established an Executive Department of the Municipal Government of the City which shall be known as the Department of Police, and shall embrace the General Superintendent of Police, an Assistant General Superintendent of Police, a Secretary of the Department of Police, a Private Secretary to said General Superintendent, one Inspector of Police for each police division, one Captain of Police for each police district, and such number of Lieutenants, Desk Sergeants, Detective Sergeants, Patrol Sergeants, Patrolmen and other employes as may be provided by ordinance.

"1732. General Superintendent—Office created—Appointment.—There is hereby created the office of General Superintendent of Police. He shall be appointed by the Mayor, by and with the advice and consent of the City Council.

"1734. Management of Department—Appointment of Members.—The General Superintendent shall have the management and control of all matters relating to the Department, its officers and

members. He shall appoint, according to law, all officers and members of said department."

Which said ordinance relating to the appointment and qualification of police officers was before then duly passed, adopted and promulgated, according to law, as an ordinance of said City of Chicago by the City Council and Mayor of said City of Chicago, and was then and there a part of the laws in force in said City of Chicago; that said ordinance, so passed, adopted and promulgated, also provided in and by another section thereof, the duties of the policemen, sergeants and members of the police force of said City of Chicago, which said section thereof is in words and figures as follows, to wit:

"1760. Police Duties.—Power of Arrest.—The several members of the police force of the City of Chicago, when on duty, shall devote their time and attention to the discharge of the duties of their stations according to the laws and ordinances of the City and the rules and regulations of the Department, to preserve order, peace and quiet and enforce the laws and ordinances throughout the
159 city. They shall have power to arrest all persons in the city found in the act of violating any law or ordinance or aiding or abetting in any such violation, and shall arrest any person found under circumstances which would warrant a reasonable man in believing that such person had committed or is about to commit crime."

Which said decision of said ordinance was then and there a part of the laws in force in said City of Chicago; that it was then and there the duty of the said Guy Biddinger to enforce the provisions of the statutes of the State of Illinois relating to larceny and receiving stolen property and it was then and there the duty of said Guy Biddinger then and there to arrest, complain against, prosecute and appear as a witness against the violators of said statutes.

That one Tommy Thomas had theretofore, in the County of Cook and State of Illinois feloniously, unlawfully and unjustly for his own gain and to prevent the owner from again possessing his property, feloniously and knowingly bought, received and aided in concealing one coat of the value of Twenty Dollars of the goods and chattels of another then before feloniously stolen and carried away from the said other by a certain evil disposed person or persons, and then and there well knew that the said *boat* had been feloniously stolen, taken and carried away and the said Guy Biddinger then and there knew that the said Tommy Thomas had committed the offense aforesaid and that each of them, said Tommy Thomas and said Guy Biddinger, knew that the other knew the premises aforesaid, and it was then and there the duty of the said Guy Biddinger then and there to arrest, complain against, prosecute and appear as a witness against the said Tommy Thomas upon the charge of re-
160 ceiving stolen property as aforesaid, as he the said Guy Biddinger then and there well knew. And that said Guy Biddinger on the said first day of August, A. D. 1909, in the said City of Chicago knowingly, corruptly and feloniously did take, accept and receive from said Tommy Thomas while he the said Guy Biddinger was then and there on duty as a policeman, sergeant and member of the police force of the City of Chicago as aforesaid, a

large sum of money to wit: The sum of one hundred and fifty dollars in money of the value of One Hundred and Fifty Dollars lawful money of the United States of America as a bribe, present and reward offered and given by the said Tommy Thomas and by him, said Guy Biddinger, then and there taken, accepted and received with the unlawful, wicked and corrupt purpose and intent of influencing him the said Guy Biddinger, in his office aforesaid, in his acts and doings in his said official capacity of policeman, sergeant and member of the police force of said City of Chicago in the matter of the arrest and prosecution of the said Tommy Thomas and to corruptly cause him the said Guy Biddinger to favor and treat him the said Tommy Thomas with partiality and to keep and protect him from arrest and punishment and free, clear and exempt from municipal or police molestation, interference or attack upon the premises aforesaid, contrary to the statute and against the peace and dignity of the *same* people of the State of Illinois.

And that he the said Guy Biddinger has not been usually and publicly resident within the State of Illinois from the First day of May 1911 and has been without the borders of the State of Illinois since said First day of May 1911.

161 This complainant further says that he has read the foregoing and that the matters and things therein set forth are true and he further says that the crime above charged was committed and that he has just and reasonable grounds to believe that the said Guy Biddinger committed said offense. Wherefore the said Christian P. Bertsche prays a warrant may issue against the said Guy Biddinger according to law.

CHRISTIAN P. BERTSCHE.

Subscribed and sworn to before me this 12th day of April A. D., 1916.

[SEAL.] JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

I have examined the within complaint and complainant and am satisfied that there is probable cause for filing the same. Leave is hereby granted to file it and it is ordered that a warrant issue against the accused.

Bail fixed at $2,500.

JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

162 Exhibit No. — of November 11, 1916.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

Christian P. Bertsche, being first duly sworn, on oath says that he is a resident of the City of Chicago, County of Cook and State of Illinois; that he has known Guy Biddinger, formerly a police officer of the police department of the City of Chicago, for about twelve years. That on the 1st day of August, in the year 1909, the said Guy Biddinger, who was then a policeman of the City of Chicago, brought a man who was known to affiant as Tommy Thomas into the saloon of affiant, and that the said Biddinger said to affiant in the presence of the said Tommy Thomas: "We have got the goods on Tommy. The suit of clothes that he is now wearing came off in a burglary, and if he wants to give up $150, we will let him go." That the said Tommy Thomas was then under arrest and in the custody of the said Guy Biddinger as a police officer. That Tommy Thomas, after the statement by the said Guy Biddinger, as above set forth, gave to affiant $100 in United States currency to give to the said Guy Biddinger, and said that he would bring the additional $50 down the following day. Thereupon affiant gave the $100 that Tommy Thomas had given to him for that purpose to the said Guy Biddinger and told the said Guy Biddinger that Tommy Thomas would bring the other $50 down the next day. Tommy Thomas admitted that the suit of clothes that he was wearing had been stolen and he knew that he was subject to prosecution upon the charge of receiving stolen property. However, the following day he came back and at that time did not have the stolen suit on him. He
163 demurred to paying the additional $50, but finally did so, to give to Guy Biddinger and affiant did give it to Guy Biddinger, which made a total of $150 that affiant gave to Biddinger. Affiant gave him all of the money at affiant's saloon in the City of Chicago, County of Cook and State of Illinois.

Immediately upon the payment of the $100 as above set forth, the said Tommy Thomas was released by the said Guy Biddinger from arrest, and he was not thereafter arrested upon any charge growing out of the receiving of said stolen property consisting of said suit of clothes, and the said Guy Biddinger, for and in consideration of said payment of $150 not only released the *same* Tommy Thomas

from arrest, but kept him free from arrest upon said charge thereafter.

This transaction with reference to *the* Tommy Thomas receiving stolen property matter was only one of many payments of money to Biddinger through affiant. Numerous well known pickpockets and thieves left money in affiant's care to be paid to Biddinger. It was usually placed in envelope, and affiant was told to hand it to Biddinger when he came in, and shortly thereafter he would appear and clai*n* the money.

On one occasion in September 1910, Mike O'Donnell left $25 in money in affiant's hands at affiant's saloon for Biddinger, and affiant gave it to Biddinger, telling him when he handed the money to him, "Mike O'Donnell left this here for you."

On another occasion, a man was swindled out of $4,500 in Chicago and affiant was given $450 by the criminals to give to the officers if a complaint came in. Guy Biddinger came to affiant's saloon and asked affiant if it was any of the men who sometices came there that had robbed the victim of the swindle, and affiant told Biddinger that he had $450 on hand in that matter, and affiant gave the money to Biddinger.

On another occasion Biddinger told affiant that he had the
164 home of George Wiliard under surveillance, and that he was wanted out of town upon a warrant, and that if Willard wanted to do business that he, Willard was to give to affiant the sum of $100 and he, Biddinger, would see that he was not arrested. Affiant went to Willard and got the $100 and gave it to Biddinger. This was in March 1909. Willard was not arrested.

Affiant says that the Tommy Thomas bribe was merely one of a long series of similar transactions in which the said police officer Guy Biddinger, whiie on duty as a police official of the City of Chicago, used affiant as a collector of bribes.

Affiant says that the said Guy Biddinger left the City of Chicago about the 1st of May, 1911, and he is now located in the City of New York. That the complaint for examination upon the charge of bribery in the Tommy Thomas matter is one of 51 complaints that have been filed in the Municipal Court of the City of Chicago, one of which complaints charges Biddinger with larceny of $50 and a pocket book of the value of $2; a confidence game by which Biddinger obtained $200; a charge of felony for destroying a Municipal Court Warrant; and eighteen charges of bribery upon separate bribes, ranging in amounts from $25 to $530 paid by confidence men, pickpockets and thieves to Biddinger for release from arrest and protection in their operations.

(Signed) CHRISTIAN P. BERTSCHE.

Subscribed and sworn to before me, this 12th day of April, A. D. 1916.

(Signed) FRANK P. DANISCH,
[SEAL.] *Clerk.*

165 Exhibit No. 3 of November 11th, 1916.

STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

Affidavit in Support of Application for Extradition.

Stephen P. Ciesiekki, being first duly sworn, on oath says that he is Deputy of and for Frank P. Danisch, Clerk of the Municipal Court of the City of Chicago, keeper of the files and records of the Municipal Court of Chicago; that on the 13th day of April, A. D. 1916, there was filed in the office of the Clerk of Municipal Court of the City of Chicago fifty-one complaints for examination in proceedings brought in the name of the People of the State of Illinois, in each of which Guy Biddinger is charged with a separate crime, felony or misdemeanor, as follows:

Complaint No. 1, Municipal Court No. 84058: That Guy Biddinger feloniously altered, corrupted and destroyed a warrant of the Municipal Court of Chicago for the arrest of Glass and Weil, confidence men.

Complaint No. 2, Municipal Court No. 84009: That Guy Biddinger feloniously stole, took and carried away fifty dollars in currency and a pocket book of the value of two dollars, the property of William Quinn (larceny).

Complaint No. 3, Municipal Court No. 84001: That Guy Biddinger obtained two hundred dollars of the money, goods and property of Joseph Weil by means and by use of the confidence game.

Complaint No. 4, Municipal Court No. 84012: That Guy Biddinger feloniously received from Glass and Weil the sum of three hundred dollars to protect them, Glass and Weil, from prosecution and arrest in the Born and Podolaski cases, and Glass and
166 Weil having obtained twenty dollars in the Born case and three thousand dollars from Podolaski, by means and by use of the confidence game.

Complaint No. 5, Municipal Court No. 84008: That Guy Biddinger feloniously received a bribe of one hundred and fifty dollars to protect Tommy Thomas against arrest upon a charge of receiving stolen property.

Complaint No. 6, Municipal Court No. 84013: That Guy Biddinger feloniously received the sum of five hundred and thirty dollars as a bribe to protect Glass and Weil from arrest and prosecution

for having conspired to obtain four thousand dollars of the money, goods and property of Otto Grabbe, by means and by use of the confidence game.

Complaint No. 7, Municipal Court No. 84014: That Guy Biddinger received twenty-five dollars as a bribe to release Louis Gazzolo and Ike Klein from arrest for larceny.

Complaint No. 8, Municipal Court No. 84015: That Guy Biddinger feloniously received a bribe of fifty dollars to release Patrick McMahon, alias Paddy Rags, under arrest for larceny.

Complaint No. 9, Municipal Court No. 84082: That Guy Biddinger feloniously received on January 1, 1910, fifty dollars as a bribe to protect Oscar Jackson, for larceny.

Complaint No. 10, Municipal Court No. 84027: That Guy Biddinger received on September 1,1910, a bribe of fifty dollars to protect Oscar Jackson upon a larceny.

Complaint No. 11, Municipal Court No. 84026: That Guy Biddinger received on September 1, 1910, a bribe of fifty dollars to protect Kid Cleary upon a larceny.

Complaint No. 12, Municipal Court No. 84025: That Guy Biddinger received on January 1, 1910, forty dollars, as a bribe to protect Kid Cleary upon a larceny.

Complaint No. 13, Municipal Court No. 84024: That Guy Biddinger feloniously received on September 1, 1910, fifty dollars as a bribe to protect one Harper upon a larceny.

167 Complaint No. 14, Municipal Court No. 84023: That Guy Biddinger feloniously received on January 1, 1910, thirty dollars as a bribe to protect one Harper on a larceny.

Complaint No. 15, Municipal Court No. 84016: That Guy Biddinger feloniously received twenty-five dollars as a bribe to protect Butch Smith upon a larceny.

Complaint No. 16, Municipal Court No. 84017: That Guy Biddinger feloniously received fifty dollars to protect one Butch Carroll upon a larceny.

Complaint No. 17, Municipal Court No. 84018: That Guy Biddinger feloniously received fifty dollars as a bribe to protect Danny Vetters upon a larceny.

Complaint No. 18, Municipal Court No. 84019: That Guy Biddinger feloniously received thirty-five dollars as a bribe to protect Eddie Mack upon a larceny.

Complaint No. 19, Municipal Court No. 84020: That Guy Biddinger feloniously received fifty dollars as a bribe to protect Johnny Hoffman upon a larceny.

Complaint No. 20, Municipal Court No. 84021: That Guy Biddinger feloniously received twenty-five dollars as a bribe to protect Michael O'Donnell upon a larceny.

Complaint No. 21, Municipal Court No. 84022: That Guy Biddinger feloniously received fifty dollars to protect one Benjamin Leeman, upon a larceny.

Each of the above and foregoing complaints charge a felony under the laws of the State of Illinois.

Complaint No. 22, Municipal Court No. 84029: That Guy Biddinger unlawfully and voluntarily suffered Paddy Rags, a prisoner, to escape.

Complaint No. 23, Municipal Court No. 84040: That Guy Biddinger unlawfully and voluntarily suffered Oscar Jackson to escape on January 1, 1910.

Complaint No. 24, Municipal Court No. 84030: That Guy
168 Biddinger unlawfully and voluntarily suffered Oscar Jackson, a prisoner, to escape on September 1, 1910.

Complaint No. 25, Municipal Court No. 84031: That Guy Biddinger u-lawfully and voluntarily suffered Kid Cleary, a prisoner, to escape on January 1, 1910.

Complaint No. 26, Municipal Court No. 84032: That Guy Biddinger unlawfully and voluntarily suffered Kid Cleary, a prisoner, to escape on January 1, 1910.

Complaint No. 27, Municipal Court No. 84033: That Guy Biddinger unlawfully and voluntarily suffered one Harper, a prisoner, to escape, on September 1, 1910.

Complaint No. 28, Municipal Court No. 84034: That Guy Biddinger u-lawfully and voluntarily suffered one Harper, a prisoner, to escape on January 1, 1911.

Complaint No. 29, Municipal Court No. 84035: That Guy Biddinger unlawfully and voluntarily suffered Butch Smith, a prisoner, to escape.

Complaint No. 30, Municipal Court No. 84036: That Guy Biddinger unlawfully and voluntarily suffered Butch Carroll a prisoner, to escape.

Complaint No. 31, Municipal Court No. 84037: That Guy Biddinger unlawfully and voluntarily suffered Danny Vetters to escape.

Complaint No. 32, Municipal Court No. 84038: That Guy Biddinger unlawfully and voluntarily suffered Eddie Mack, a prisoner, to escape.

Complaint No. 33, Municipal Court No. 84039: That Guy Biddinger unlawfully and voluntarily suffered John Hoffman, a prisoner, to escape.

Complaint No. 34, Municipal Court, No. 84041: That Guy Biddinger unlawfully and voluntarily suffered Mike O'Donnell, a prisoner, to escape.

Complaint No. 35, Municipal Court No. 84042: That Guy Biddinger unlawfully and voluntarily suffered Benjamin Lee-
169 man, a prisoner, to escape.

Complaint No. 36, Municipal Court No. 84010: That Guy Biddinger unlawfully and voluntarily suffered Ike Klein and Louis Gazzalo, prisoners, to escape.

Complaint No. 37, Municipal Court No. 84051: That Guy Biddinger refused to confine and suffered Ike Klein and Louis Gazzalo, prisoners, to escape.

Complaint No. 38, Municipal Court No. 84052: That Guy Biddinger refused to confine and suffered Ben Leeman, a prisoner, to escape.

Complaint No. 39, Municipal Court No. 8405-: That Guy Biddinger refused to confine and suffered Mi*d*e O'Donnell a prisoner, to escape.

Complaint No. 40, Municipal Court No. 84049: That Guy Biddinger refused to confine and suffered John Hoffman, a prisoner, to escape.

Complaint No. 41, Municipal Court No. 84048: That Guy Biddinger refused to confine and suffered Eddie Mack, a prisoner, to escape.

Complaint No. 42, Municipal Court No. 84047: That Guy Biddinger refused to confine and suffered Danny Vetters, a prisoner, to escape.

Complaint No. 43, Municipal Court No. 84046: That Guy Biddinger refused to confine and suffered Butch Carroll, a prisoner, to escape.

Complaint No. 44, Municipal Court No. 84045: That Guy Biddinger refused to *con*dine and suffered Butch Smith, a prisoner, to escape.

Complaint No. 45, Municipal Court No. 84044: That Guy Biddinger refused to confine and suffered one Harper, a prisoner, to escape September 1, 1910.

Complaint No. 46, Municipal Court No. 84043: That Guy Biddinger refused to confine and suffered one Harper, a prisoner, to escape, September 1, 1910.

170 Complaint No. 47, Municipal Court No. 84057: That Guy Biddinger refused to confine and suffered Kid Cleary a prisoner, to escape, January 1, 1910.

Complaint No. 48, Municipal Court No. 84056: That Guy Biddinger refused to confine and suffered Kid Cleary, a prisoner, to escape September 1, 1910.

Complaint No. 49, Municipal Court No. 84053: That Guy Biddinger refused to confine and suffered Oscar Jackson, a prisoner, to escape September 1, 1910.

Complaint No. 50, Municipal Court No. 84054: That Guy Biddinger re*d*uced to confine and suffered Oscar Jackson, a prisoner, to escape January 1, 1910.

Complaint No. 51, Municipal Court, No. 84055: That Guy Biddinger refused to confine and suffered Patrick McMahon, alias Paddy Rags, to escape.

All of the foregoing complaints for examination, numbered from 22 to 51, inclusive, charge misdemeanors under the law of the State of Illinois.

Certified copies of each of the above and foregoing complaints are attached hereto and are respectively numbered as per the schedule hereinabove set forth, and that upon each of the several complaints for examination hereinabove mentioned, warrants in due form of law have been issued out of the office of the Clerk of the Municipal Court of Chicago, and have been delivered to the Bailiff of the Municipal Court of Chicago for the arrest of the said Guy Biddinger, and are now in the hands of the Bailiff of said court for

service upon the said Guy Biddinger, to answer upon said complaint for examination.

Further affiant sayeth not.

(Signed) STEPHEN P. CIESIEKKI.

Subscribed and sworn to before me, this 13th day of April, A. D., 1916.

[SEAL.] (Signed) HENRY M. SCHREPFER.

171 Exhibit No. XIII of November 11, 1916.

Exhibit No. 2 of November 11, 1916.

STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

The People of the State of Illinois to the Bailiff of The Municipal Court of Chicago, and to all Sheriffs, Coroners, and Constables within said State, and to all Police Officers of the City of Chicago, Greeting:

Whereas, Christian P. Bertsche has this day made complaint under oath before Hon. Jacob H. Hopkins one of the Judges of The Municipal Court of Chicago, which complaint has been filed with the undersigned Clerk of said Court, and the Court having this day exa· ined under oath said complainant and read the complaint filed ·ein, and it appearing to the Court that the offense of Bribery has been committed in the City of Chicago, in the State aforesaid, contrary to the form of the statute in such case made and provided, and the Court having found that there is probable cause for believing that Guy Biddinger guilty of said offense, and the Court having ordered that a warrant issue out of this Court for the arrest of said Guy Biddinger,

We, therefore, command you, forthwith to take the person of said Guy Biddinger and him safely keep so that you may have his body instanter before The Municipal Court of Chicago, in Branch 16 at Room 1114, City Hall, to answer to the People of the State of Illinois for and concerning said crime and to be dealt with according to law, and have you then and there this writ with an endorsement thereon as to the manner in which you may execute the same.

Witness Frank P. Danisch, Clerk of said Court, and the seal thereof, at Chicago aforesaid, this 13th day of April, A. D., 1916.

(Signed) FRANK P. DANISCH,

[SEAL.] *Clerk of the Municipal Court of Chicago.*

172 Municipal Court.

STATE OF ILLINOIS,
City of Chicago, ss:

I, Frank P. Danisch, Clerk of The Municipal Court of Chicago, the same being a court of record in said city and state, do hereby certify the above and foregoing to be true, perfect and complete copies, respectively, of a complaint sworn to before the Honorable Jacob H. Hopkins, one of the Judges of The Municipal Court of Chicago, and now on file in my office, and a warrant issued by me pursuant to the order of said court in a certain cause now pending in said court in which the People of the State of Illinois are plaintiffs and Guy Biddinger is defendant. And I further certify that said Jacob H. Hopkins was on the day said complaint and warrant bear date, and now is, one of the duly elected, commissioned and qualified Judges of said court and authorized by law to administer oaths, and that as such full faith and credit are due to all his official acts as such in all courts of record and elsewhere.

Witness my hand and the seal of said court this 13th day of April, A. D., 1916.

(Signed) FRANK P. DANISCH,
[SEAL.] *Clerk of the Municipal Court of Chicago.*

173 UNITED STATES OF AMERICA,
State of Illinois, City of Chicago, ss:

I, Harry Olson, Chief Justice of The Municipal Court of Chicago, in said city and state do hereby certify that Frank P. Danisch, whose name is subscribed to the above certificate of attestation, now is, and was at the time of signing and sealing the same, the Clerk of The Municipal Court of Chicago and Keeper of the Records and Seal thereof, duly elected and qualified to office; that full faith and credit are due all his official acts as such in all Courts of Record in the United States and elsewhere; and, further, that his attestation is in due form of law and by the proper officer.

Given under my hand at my Chambers in Chicago, this 13th day of April, A. D. 1916.

(Signed) HARRY OLSON, [SEAL.]
Chief Justice of the Municipal Court of Chicago.

STATE OF ILLINOIS,
City of Chicago, ss:

I, Frank P. Danisch, Clerk of The Municipal Court of Chicago, in said city and state, do hereby certify that the Honorable Harry Olson, whose name is subscribed to the above certificate of attestation, now is, and was at the time of signing and sealing the same,

Chief Justice of The Municipal Court of Chicago, and was duly elected, commissioned and qualified to office; that full faith and credit are due all his official acts as such in all Courts of Record in the United States and elsewhere; and that his attestation is in due form of law and by the proper officer.

Given under my hand and the seal of said court, at Chicago, this 13th day of April A. D., 1916.

(Signed) FRANK P. DANISCH,
[SEAL.] *Clerk of the Municipal Court of Chicago.*

174 STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

Benjamin Leeman of 5418 N. Dearborn Street, Chicago, Illinois, who prosecutes in the name and by the authority of the people of the State of Illinois, complains to Hon. Jacob H. Hopkins, one of the Judges of the Municipal Court of Chicago, and being duly sworn and examined, on oath states that one Guy Biddinger, late of the County of Cook, on the Fifteenth day of November in the year of Our Lord One Thousand Nine Hundred and Eight in the County of Cook in the State of Illinois aforesaid, Fifty Dollars in money, currency of the United States of America, of the value of Fifty Dollars lawful money of the United States of America, and one pocketbook of the value of Two Dollars, of the personal goods, money and property of one William Quinn, then and there being found, did then and there feloniously steal, take and carry away, contrary to the statutes and against the peace and dignity of the *same* people of the state of Illinois; and that he, the said Guy Biddinger, has not been usually and publicly resident within the State of Illinois from the First day of May, 1911, and has been without the borders of the State of Illinois, since said First day of May, 1911.

The complainant further says that he has read the foregoing and that the matters and things therein set forth are true, and he further says that the crime above charged was committed, and that
175 he has just and reasonable grounds to believe that the said Guy Biddinger committed said offense.

Wherefore the said Benjamin Leeman prays a warrant may issue against the said Guy Biddinger according to law.

BENJAMIN LEEMAN.

Subscribed and sworn to before me this 12th day of April, A. D., 1916.

[SEAL.] JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

I have examined the within complaint and complainant and am satisfied that there is probable cause for filing the same. Leave is

hereby granted to file it, and it is ordered that a warrant issue against the accused. Bail fixed at $3500.

JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

176 STATE OF ILLINOIS,
County of Cook,
City of Chicago, ss:

Benjamin Leeman, being first duly sworn, on oath says that he is a resident of the City of Chicago, County of Cook and State of Illinois; that he has known Guy Biddinger for about 12 years; that said Guy Biddinger was formerly a member of the police force of the City of Chicago and that he left Chicago about May 1st, 1911; that while said Guy Biddinger was a member of the Chicago police force this affiant was arrested by the said Guy Biddinger numerous times and on each occasion affiant gave money to the said Guy Biddinger.

That about March of the year 1908 a man named John Hardy was arrested as a fugitive from Washington, D. C., on a charge of larceny and affiant paid to said Guy Biddinger the sum of Fifty Dollars to prevent the return of said John Hardy to Washington.

That on another occasion affiant was arrested with several other men by said Guy Biddinger at William Donchue's saloon at Clark Street near Ohio street in the City of Chicago; that affiant was taken to the Detective Bureau, where he stayed for about an hour; that said Guy Biddinger came down to the cell to see affiant and demanded that affiant give him Twenty Dollars to book affiant, and affiant gave it to him; the original arrest was for larceny, that is, for picking pockets; that soon as affiant paid the Twenty Dollars to Guy Biddinger affiant was at once booked for disorderly conduct and released on bond, and later at police court affiant was discharged.

There were several other instances where affiant paid Guy Biddinger sums from ten dollars up to fifty dollars, and affiant was continually giving him money.

On the Fifteenth day of November, A. D., 1908, Guy Biddinger arranged to take a man named William Quinn, a Chicago saloon keeper, to a prize fight at Waukegan, Illinois, and Guy Bid-
177 dinger told affiant that Quinn would have $1000 on his person, and said Guy Biddinger arranged with affiant that affiant should steal it from his pocket; that affiant with several others did steal his pocket book, in the city of Chicago and in that transaction while affiant and the others were operating and in the effort to steal the pocket book said Quinn was jostled and shoved by Guy Biddinger himself, and his jostling was intended by him to aid affiant and the others, and his jostling materially assisted affiant in getting Quinn's pocketbook; the amount received however, was not $1000, but $50 and, of course, affiant and the others had the pocketbook itself, which was worth about $2. That of the $50 stolen from

Quinn affiant gave Guy Biddinger the sum of $20 in currency from the pocketbook.

Affiant states that the above and foregoing matters are true and that the said Guy Biddinger did aid and assist him in stealing the $50 from said William Quinn, as above set forth and that requisition for the said fugitive is not sought for the purpose of collecting a debt, to allow any person to travel at the expense of the State, or to answer any private end whatever.

(Signed) BENJAMIN LEEMAN.

Subscribed and sworn to before me this 12th day of April, A. D., 1916.

(Signed) FRANK P. DANISCH,
[SEAL.] *Clerk.*

178 Exhibit No. 3 of November 11, 1916.

The Municipal Court of Chicago.

Warrant for Examination.

STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

GUY BIDDINGER.

The People of the State of Illinois to the Bailiff of the Municipal Court of Chicago, and to all Sheriffs, Coroners, and Constables within said State, and to all Police Officers of the City of Chicago, Greeting:

Whereas, Benjamin Leeman has this day made complaint under oath before Hon. Jacob H. Hopkins, one of the Judges of The Municipal Court of Chicago, which complaint has been filed with the undersigned Clerk of said Court, and the Court having this day examined under oath said complainant and read the complaint filed herein, and it appearing to the Court that the offense of Grand Larceny has been committed in the City of Chicago, in the State aforesaid, contrary to the form of the statute in such case made and provided, and the Court having found that there is probable cause for believing *that* Guy Biddinger guilty of said offense, and the Court having ordered that a warrant issue out of this Court for the arrest of said Guy Biddinger,

We, therefore, command you, forthwith to take the person of said Guy Biddinger and him safely keep, so that you may have his body

instanter before the Municipal Court of Chicago, in Branch 16 at 1114 City Hall, to answer to the People of the State of Illinois for and concerning said crime and to be dealt with according to law, and have you then and there this writ with an endorsement thereon as to the manner in which you may execute the same.

Witness, Frank P. Danisch, Clerk of said Court, and the seal thereof, at Chicago aforesaid, this 13th day of April A. D. 1916.

(Signed) FRANK P. DANISCH,
[SEAL.] *Clerk of the Municipal Court of Chicago.*

179 There was also attached to this warrant a certificate of the Clerk of the Municipal Court, which was offered in evidence similar to the one attached to the warrant on the bribery charge.

180 Exhibit No. 32 of November 11, 1916.

STATE OF ILLINOIS,
City of Chicago, ss:

In the Municipal Court of Chicago.

Shelby M. Singleton of Wilmette, Illinois, who prosecutes in the name and by the authority of the people of the State of Illinois, complains to Hon. Jacob H. Hopkins, one of the Judges of the Municipal Court of Chicago, and being duly sworn and examined, on oath states that Guy Biddinger on the first day of September, A. D., 1910, at the City of Chicago in the county aforesaid was a policeman and a member of the police force and a sergeant thereof of the City of Chicago, an incorporated city there situate, the said Guy Biddinger being then and there duly appointed, qualified and acting as such policeman sergeant and member of the police force of the said City of Chicago; and the said Guy Biddinger was then and there an officer authorized to make arrests and to have the custody of prisoners, and the said Guy Biddinger then and there did arrest and did have in his custody as a prisoner, one Michael O'Donnell, and that it was then and there the duty of the said Guy Biddinger, as such officer, to confine the said Michael O'Donnell and him safely keep to answer according to law upon a charge of larceny; and that said Guy Biddinger on said first day of September in the year of our Lord One Thousand Nine Hundred and ten in the City of Chicago, County of Cook, and State of Illinois, unlawfully, willfully and corruptly refused to confine said Michael O'Donnell, who was then and there charged with and was placed under arrest upon the charge of larceny as aforesaid, and unlawfully, wilfully and corruptly omitted and delayed the execution of process to him directed in that behalf, whereby the said Michael O'Donnell did escape, contrary to the statute and against the peace and dignity of the said people of the State of Illinois.

And that he, the said Guy Biddinger has not been usually and

publicly a resident within the State of Illinois from the
181 first day of May, 1911, and has been without the borders of the State of Illinois since said first day of May, 1911.

This complainant further says that he has been informed of the matters and things hereinabove set forth, and that he believes the same, and upon such information and belief states that he has just and reasonable grounds to believe that the said Guy Biddinger committed said offense, wherefore he prays a warrant may issue against the said Guy Biddinger according to law.

(Signed) SHELBY M. SINGLETON.

Subscribed and sworn to before me this 12th day of April, A. D., 1916.

(Signed) JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

I have examined the within complaint and complainant and am satisfied that there is probable cause for filing the same. Leave is hereby granted to file it, and it is ordered that a warrant issue against the accused.

Bail fixed at $1,500.

(Signed) JACOB H. HOPKINS,
Judge of the Municipal Court of Chicago.

The foregoing affidavit is similar in form to 47 others submitted at the same time each charging a different crime.

182 In the Matter of GUY B. BIDDINGER.

CITY AND COUNTY OF NEW YORK, *ss:*

Verda S. Biddinger, being duly sworn, deposes and says:

I reside at No. 974 E. Main St. in the city of Bridgeport, State of Connecticut.

While visiting Mrs. L. F. Biddinger at No. 12 West Ohio St. Chicago, Illinois, in the late Summer of 1912, I met Mr. Guy B. Biddinger at the above named address.

I engagem room and board with Mrs. L. F. Biddinger at No. 12 West Ohio St., Chicago, Illinois, December 31st, 1912 and continued my residence, except for a short visit to my home in Sturgeon Bay, Wis., till May 6th, 1914 and during that time met Mr. Guy B. Biddinger many times, when he would come home from business trips.

Mr. Guy B. Biddinger maintained a room containing personal effects all diring the time I stopped with Mrs. L. F. Biddinger at No. 12 West Ohio St., Chicago, Illinois, up to and including August 11, 1914.

During said time, I accompanied Mrs. L. F. Biddinger to the Post Office and Express Office to ship personal effects to Mr. Guy B. Biddinger, when he was unable to come home for same.

Upon my return to Chicago, Illinois, August 2nd, 1914, I again

took up my residence with Mrs. L. F. Biddinger at #12 West Ohio St.

During time from Aug. 2nd, 1914 to Aug. 11th, 1914, I helped Mrs. L. F. Biddinger pack and get her household effects ready for storage, and also sent a box of personal effects to Mr. Guy B. Biddinger's New York address by Express, August 10th, 1914.

VERDA S. BIDDINGER.

Sworn to before me this 24th day of April, 1916.

A. W. TREMAIN,
Notary Public.

183 Holland House,

Fifth Avenue and Thirtieth Street,

New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Virgilia Biddinger, being duly sworn, says:

In August, 1913, returning from Colorado, I wired to Guy Biddinger at No. 12 West Ohio St., Chicago, Illinois, that I was coming thro- Chicago with my daughter. He met us at the train and we went to his home at 12 West Ohio St. and met his mother and father and motored around Chicago for many hours, until dinner, about 6 P. M., then he put us on the R. R. train and I left him in Chicago, after that I wrote him to Chicago, a number of times, always to 12 West Ohio St.

He told me at that time, as I knew the fact to be, that he was a resident of Chicago, Ill.

VIRGILIA BIDDINGER.

Sworn to before me this 26th day of April, 1916.

HYMAN TUCKER,
Comm. of Deeds, N. Y. City.

184 In the Matter of GUY B. BIDDINGER.

CITY AND COUNTY OF NEW YORK, *ss:*

Claude Biddinger, being duly sworn, d*i*poses and says:

I reside at 974 East Main Street, in the City of Bridgeport, State of Connecticut.

I am a brother of Guy B. Biddinger, the person named in the herein proceedings.

On the 11th day of May, 1911, and for some time prior thereto and for over three years subsequent thereto, I resided in the City of Chicago, State of Illinois.

While living in the City of Chicago, State of Illinois, I resided at

No. 12 West Ohio Street, and lived there at the times hereinbefore mentioned with my *my* mother.

For a period of six months prior to August, 1914, Guy B. Biddinger, my brother, lived with myself and my mother in our home at the residence hereinbefore mentioned, and during that period of time, he paid monthly board to my mother, kept his clothes and personal effects in his room thereof, and maintained his residence at that address.

CLAUDE BIDDINGER.

Sworn to before me this 22nd day of April, 1916.

HYMAN TUICHEN,
Comm. of Deeds, N. Y. City.

Comm. expires May 19, 1916.

185 In the Matter of GUY B. BIDDINGER.

CITY AND COUNTY OF NEW YORK, *ss:*

Lucy F. Biddinger, being duly sworn, deposes and says:

I reside at 974 East Main Street, in the City of Bridgeport, State of Connecticut.

I am the mother — Guy B. Biddinger, the person named in the herein proceedings.

On the 11th day of May, 1911, and for some time prior thereto and for over three years subsequent thereto, I resided in the City of Chicago, State of Illinois.

While living in the City of Chicago, State of Illinois, I resided at No. 12 West Ohio Street, and lived there at the times hereinbefore mentioned with my son.

For a period of six months prior to August, 1914, Guy B. Biddinger, my son, lived with me and my son, Claude Biddinger, in my home at the residence hereinbefore mentioned, and during that period of time, my son, Guy B. Biddinger paid monthly board to me, kept his clothes and personal effects in his room there and maintained his residence at that address.

LUCY F. BIDDINGER.

Sworn to before me, this 24th day of April, 1916.

A. W. TREMAIN,
Notary Public.

186 STATE OF ILLINOIS,
County of Cook, ss:

M. W. Grosse, being first duly sworn on oath states that he is an attorney at law, regularly licensed and admitted to practice before courts in the State of Illinois, and is actively engaged in said practice before the courts of Cook County. That in the police department of said city there is kept as a public document and record a book in

the register department of police, that said book shows, that Guy Biddinger was born January 15th, 1875, at Cincinnati, Ohio, that he qualified for the police department on January 21st, 1903, and received his appointment as a member of the police department of the City of Chicago, on January 21st, 1903; that he resigned from the department January 25th, 1914, said resignation to take effect January 26th, 1914, from the detective bureau. Under the head of promotion said record shows that the said Guy Biddinger became desk sergeant 2/17/08 and that thereafter he received the promotion to first class detective sergeant on October 11, 1903, under a general order of said police department of the City of Chicago which said general order bore last mentioned date and was number 6.

MARTIN W. GROSSE.

Subscribed and sworn to this 25th day of April, A. D. 1916.
FOREST GARFIELD SMITH,
Notary Public.

187 STATE OF ILLINOIS,
County of Cook, ss:

M. W. Grosse being first duly sworn on oath states that he is informed and believes and so states it to be a fact, that said Department of Police of the City of Chicago, has other record sheets which show the day and date of all furloughs granted to said Guy Biddinger, and also keeps what is know- as a service sheet, which shows the period for which salary was drawn, and that there are further records showing the day and dates that arrests were made, that, however, upon inquiry and demand being made for the said records, the said department through its officials or employees states that the said records have been sent in the custody of one Dompke, assistant to the secretary of the police department of the City of Chicago to Albany, New York, and that the same will be produced on the hearing of the matter of Guy Biddinger before his Excellency the Governor of the State of New York, and the said department gave the above as reason why copies of the same could not be furnished the attorneys for the same Guy Biddinger, which said attorneys made demand for copies of the said public documents.

MARTIN W. GROSSE.

Subscribed and sworn to this 25th day of April, A. D. 1916.
FOREST GARFIELD SMITH,
Notary Public.

188 STATE OF ILLINOIS,
County of Cook, ss:

M. W. Grosse, being first duly sworn on oath states that he is an attorney at law, regularly licensed and admitted to practice before courts in the State of Illinois, and is actively engaged in said practice before the courts of Cook County. That the attached is the regular book of rules and regulations of the department of police of

the City of Chicago, that this affiant is informed and believes and so states it to be a fact that said rules and regulations went into effect November 1st, 1910, that new rules, or a new book of rules and regulations has been compiled, and is in the hands of the printer, and will shortly appear as the new book of rules and regulations for the said department of police of the City of Chicago, that however, until the said book is printed the said department is acting under the book of rules and regulations attached hereto, that said rules and regulations have been contin-ously in force and effect since said 1st day of November, 1910, down to and including this day and date. Affiant further states that he is informed and believes, and so states it to be a fact that there is no other book of rules than the one attached.

MARTIN W. GROSSE.

Subscribed and sworn to this 25th day of April, A. D., 1916.

FOREST GARFIELD SMITH,
Notary Public.

189 STATE OF ILLINOIS,
County of Cook, ss:

Robert E. Cantwell, being first duly sworn, on oath states that he is an attorney at law, practicing before the Courts of Cook County, at Chicago, Illinois that he represented the said Guy Biddinger in his divorce proceedings, and at said time the said Biddinger claimed Chicago as his residence, dealt with the said case as a resident of Chicago, had numerous conferences in reference to the same, and said case was tried, and a decree entered therein October 15, 1913, on the theory that Mr. Biddinger was a resident of Chicago, that said Biddinger had numerous consultations with this affiant in his office in Chicago, and it was the general understanding that the said Biddinger was during said time, to wit, September to October 1913 a resident of Chicago, Cook County, Illinois.

ROBERT E. CANTWELL.

Subscribed and sworn to this 24th day of April, A. D., 1916.

FOREST *of* GARFIELD SMITH,
Notary Public.

County Clerk's notarial certificate annexed.

190 STATE OF ILLINOIS,
County of Cook, ss:

William F. Quinn, being first duly sworn on oath states that he was in the saloon business at 142 S. Clark Street, down to and until the year 1908, that he did go to a prize fight at Waukegan, Illinois, in said 1908, and did see Guy Biddinger, then a sargeant of police, of Chicago, at Waukegan; that there was no talk about any "one thousand dollars" bet at that time, that however, he ceased to own

said saloon in the year 1908, and has not been in the saloon business from 1908 down to the present date, that the incident of the prize fight he speaks of in charge of said train was the aforesaid Guy Biddinger, and one Duback, that this affiant never since said 1908 to the present date has been to Waukegan to see a prize fight, nor did he see one there in 1911, neither did he see Guy Biddinger or have his pocket picked, and lose a purse, valued at two dollars, containing fifty dollars in money, that no such incident ever took place, that this affiant further states that he is acquainted with Guy Biddinger, and knows him to be the Guy Biddinger, who was sergeant of police, and the same one who was to the fight in Waukegan, in 1908.

WILLIAM F. QUINN.

Subscribed and sworn to this 24th day of April, A. D., 1916.

FOREST GARFIELD SMITH,
Notary Public.

191 STATE OF ILLINOIS,
County of Cook, ss:

William Quinn being first duly sworn on oath states that he is a resident of Chicago, Cook County, Illinois, that he was and still is engaged in the Saloon business at 31st and Calumet Avenue, that he knows Guy Biddinger formerly a detective sargeant of police of the City of Chicago, that, however, on the 15th day of November, 1908, he did not arrange with said Guy Biddinger, or at any other time make such arrangements to go to a prize fight at Waukegan, Illinois, that this affiant never at any time while he was in the company of Guy Biddinger talking to the said Guy Biddinger have his pocket picked, in which said pocket book there was the sum of fifty dollars ($50), nor did he have his pocket picked under such circumstances of any pocketbook, or of any sum of money whatsoever.

Further affiant sayeth that if any one has sworn to an affidavit stating that he, this affiant, had his pocket picked, in 1908, or at any other time while he was in the company of Guy Biddinger, or that he this affiant went to Waukegan to see a prize fight, or made arrangements to go with said Guy Biddinger, or that this affiant's pocket book was picked, or that he lost a pocket book with fifty dollars or any other sum under such circumstances, the person signing said affidavit is swearing to a falsehood, and something untrue in each and every material part.

WILLIAM W. QUINN.

Subscribed and sworn to this 24th day of April, A. D., 1916.

FOREST GARFIELD SMITH,
Notary Public.

192 Exhibit No. 14 of November 15, 1916, for Identification.

Charleston, W. Va.,

April 18, 1916.

Governor Charles S. Whitman, Albany, N. Y.:

From certain facts which I have of my personal knowledge I am inclined to the belief that there probably are some suspicious circumstances attached to the charges made against Guy Biddinger of New York City for whom extradition papers have been issued. Mr. Biddinger has been of great assistance in this State in bringing about the indictment of persons who have attempted to interfere with the orders of the public service commission of this State and I would not be surprised to know that he is the victim of a frameup. Would respectfully request a careful consideration of the merits of the application for extradition in order that there may be no miscarriage of justice. The exorbitant bond which has been demanded of Biddinger seems to justify conclusion as to his being the victim of a conspiracy.

HENRY D. HATFIELD,
Governor of West Virginia.

193 Exhibit No. 15 for Identification of November 15, 1916.

Charleston, W. Va.,

April 25, 1916.

Hon. Charles S. Whitman, Governor of New York, Albany, N. Y.:

In re extradition proceedings of Guy Biddinger alleged fugitive from Illinois Governor Dunne of Illinois has granted rehearing on application for extradition and I understand has requested that action on matter be deferred by you for one week. I hope it will be your pleasure to grant the request pending Governor Dunne's decision. Representatives of this State have gone to Springfield to present the matter to him and could not reach Albany for hearing which you set for Wednesday. I am convinced that prosecution of Biddinger was not instituted in good faith as indicated by published statements of A. Leo Weil that he financed inquiry which resulted in charges being instituted and proceedings were solely to gratify personal ends of A. Leo Weil who is under indictment in this State for offering bribes to members of Public Service Commission as agent of the Manufacturers Heat and Light Co. Biddinger is necessary, material and indispensible witness against Weil and prosecution cannot proceed without him. Biddinger I understand is now under $30,000 bail in habeas corpus proceedings instituted after arrest on your Executive warrant in extradition proceedings in addition to his bonds. I pledge you my word and the honor of the State of West Virginia that Biddinger will appear when you want him. The State of West Virginia needs him as a witness in one of

the most important criminal cases in its history involving the public welfare and protection of the people. The complaints upon which extradition New York is sought are based upon alleged offenses committed years ago. As Illinois has waited so many years she cannot be prejudiced by waiting a few weeks or months longer. On the other hand the State of West Virginia will not only be prejudiced,
but the ends of justice will be defeated by Biddinger's extra-
194 dition to Illinois at this time. The rights of the State of
West Virginia are at least equal and I think under these exceptional circumstances are superior to those of Illinois. While firmly convinced that charges against Biddinger originated in bad faith, I do not ask you to revoke your Executive warrant, certainly not at this time, until after a full hearing has been had. But I do feel that I have a right to ask, and I hereby respectfully request, that you suspend your Executive warrant of extradition until after the matter has been further passed upon by Governor Dunne, or until after West Virginia is through with Biddinger and the case of A. Leo Weil has been disposed of. When that has been done you can rest assured that Biddinger will be produced at Albany on demand.

HENRY D. HATFIELD.

195 Exhibit No. 16 for Identification of Nov. 16, 1916.

Springfield, Ill.,

April 25, 1916.

Hon. Charles S. Whitman, Governor of New York, Albany, N. Y.:

Acting upon the written request of the Governor of West Virginia I have concluded to give a hearing to counsel for Guy B. Biddinger upon his application to recall my requisition sent to you for his extradition. Counsel on both sides have been notified and the hearing will take place tomorrow morning in Chicago, Hotel La Salle eleven o'clock. Cannot say whether it will be concluded tomorrow. Would therefore respectfully request that you defer action upon my request for his extradition for one week within which time I hope to be able to determine the question as to whether or not the requisition should be recalled. The requisition was issued without any hearing given to the defendant.

E. F. DUNNE,
Governor of Illinois.

196 Exhibit No. 17 for Identification of November 15, 1916.

Albany, April 25, 1916.

Hon. E. F. Dunne, Governor of the State of Illinois, Springfield, Ill.:

Your telegram received. Will postpone final action upon the Biddinger matter until further advised by you.

CHARLES S. WHITMAN.

197 Exhibit No. A of November 11, 1916.

State of Illinois,

Executive Department,

Springfield.

April 28, 1916.

Edward F. Dunne, Governor.

DEAR GOVERNOR WHITMAN: At the written request of Governor Hatfield of West Virginia, I gave an extended hearing to the attorney of the State of Illinois, the attorney for the State of West Virginia and the attorney for Guy B. Biddinger yesterday and the day before in Chicago, and after full and careful consideration of all of the issues involved, I reached the conclusion that it was my duty, as Governor of the State of Illinois, to recall the requisition heretofore issued by me and addressed to you for the extradition of Guy B. Biddinger.

I therefore, respectfully request the return of the same, which will be withheld until the proceedings in West Virginia in which Biddinger is involved can be disposed of in that State.

Very truly yours,

(Signed) E. F. DUNNE, *Governor.*

Hon. Charles S. Whitman, Governor of New York, Albany, New York.

198 Exhibit No. 19 of November 15, 1916.

State of New York,

Executive Chamber,

Albany.

May 1, 1916.

Hon. Edward F. Dunne, Executive Department, Springfield, Ill.

MY DEAR GOVERNOR DUNNE: I am in receipt of your communication of April 28th, 1916, relating to the rendition of Guy Biddinger in your State, and I desire to inform you that I have this day revoked my warrant heretofore issued by me on April 15th, 1916.

Yours very truly,

CHARLES S. WHITMAN.

199 May 1, 1916.

Mr. Moses H. Grossman, 115 Broadway, New York:

Governor has revoked warrant for rendition of Biddinger and same has been mailed today to Police Commissioner New York City.

JOHN A. WALDRON,
Requisition Clerk.

200 State of New York,

Executive Chamber,

Albany.

The requisitions of the Governor of the State of Illinois, dated April 14, 1916, for the rendition of Guy Biddinger, charged with the crimes of Grand Larceny, Bribery and Voluntarily Permitting a Prisoner to Escape in that State, having been honored heretofore, to wit, on the 15th day of April 1916, and a warrant for the arrest and rendition of said Guy Biddinger having been issued to the Police Commissioner of the City of New York, and a hearing being ordered by me for the 26th day of April, 1916, and on the request of the Governor of the State of Illinois that no action be taken on the rendition of said Guy Biddinger until advised by him.

Now therefore, after notice and request of the Governor of the State of Illinois that he had recalled his papers for the rendition of said Biddinger, it is

Ordered, that the said warrant for the arrest and rendition of said Biddinger be, and the same hereby is, revoked and vacated.

Given under my hand and the Privy Seal of the State at the Capitol in the City of Albany, this 31st day of April in the year of our Lord one thousand nine hundred and sixteen.

[SEAL.] (Signed) CHARLES S. WHITMAN.

By the Governor:

WM. A. ORR,
Secretary to the Governor.

201 Hon. Charles S. Whitman, Governor New York State, Albany, N. Y.:

In re extradition proceedings against Guy B. Biddinger I hereby request that you vacate your warrant of extradition or at least suspend the operation of your warrant until after the trial of the case of West Virginia against A. Leo Weil who is under indictment for attempted bribery for the reason that Biddinger is a necessary, material, important and indispensible witness against Weil without whose personal presence it will be impossible to convict Weil and the indict-

ment will be dismissed. Biddinger is now under twenty thousand dollars bail in habeas corpus proceedings instituted after arrest on your Executive warrant in extradition proceedings. In addition to his bond, I pledge you my word and the honor of the State of West Virginia that Biddinger will appear when you want him. The State of West Virginia needs Biddinger more than the State of Illinois. The indictments on which extradition from New York is sought are based upon alleged offenses committed years ago. As Illinois has waited so many years she can't be prejudiced by waiting a few weeks or months longer. On the other hand the State of West Virginia will not only be prejudiced, but the justice of my State defeated by Biddinger's extradition to Illinois. The rights of the State of West Virginia, are at least equal, and I think under these exceptional circumstances, are presently superior to those of Illinois. I respectfully but firmly and emphatically protest against this species of attempted legal kidnapping of Biddinger and insist that West Virginia is at present entitled to priority over Illinois.

H. D. HATFIELD,
Governor of West Virginia.

202 Exhibit No. 31 for Identification of November 15, 1916.

June 24th, 1916.

In re Biddinger.

Hon. O. L. Potter, Executive Chamber, Albany, N. Y.

DEAR MR. POTTER: The Governor stated at the hearing yesterday that he would not grant extradition unless the State's Attorney of Cook County agreed that Biddinger would not be tried in Illinois until after the disposition of the Weil case in West Virginia. Such a stipulation is, of course, quite proper, but it would not meet the situation nor supply the necessities of the case, nor accomplish the object the Governor has in view. It can, however, be accomplished in another way and I am writing you about the matter because I know how busy the Governor is and how occupied his mind with matters of State and National importance, and I have no desire to burden him with this comparatively small matter, although it is of transcending importance to my client and to the State of West Virginia. If you, in your wisdom, deem proper and appropriate to submit this letter to the Governor, and he has the time and the inclination to read it, I shall, of course, be glad to have you do so.

As between Illinois and Biddinger, the Governor feel- that the Executive Warrant should issue. As between Illinois and West Virginia, the Governor seems to feel that Illinois is entitled to Biddinger and should have him, provided however, that Illinois does nothing which will prevent West Virginia from having and using Biddinger upon the trial of the case in West Virginia against Weil. And so the Governor has determined to issue the executive warrant, provided Maclay Hoyne, the State's Attorney of Cook County, Ill., promises

not to try Biddinger until after the Weil case has been disposed of. I am going to show you that such a promise will not
203 operate to accomplish the purpose intended.

1. Such a promise is purely personal. My Hoyne's term of office expires in November. When his successor is elected, he may move Biddinger's case for trial, taking the position that he was not a party to the arrangement, and that He made no promise to Governor Whitman. As a matter of fact, in an extradition case, handled by Assistant District Attorney Richter, while the Governor was District Attorney, a promise was made by a State's Attorney in a demanding state, with respect to the amount of bail to be fixed, under return of the alleged fugitive, which promise was wilfully and flagrantly violated, and although Assistant District Attorney Richter took up the cudgels on behalf of the fugitive and wrote the State's Attorney, giving him his opinion of such conduct, and vigorously protesting against it, the State's Attorney of the demanding state laughed at the protestations of Mr. Whitman's assistant and the poor fugitive, who relied on the State's Attorney's promise, suffered by its breach.

2. If then a State's Attorney does sometimes violate his promise, how much probability there is that such promise be violated by his successor in office, who is not a party to it?

3. Such promise is not binding on the State's Attorneys of other counties in Illinois. Even though Mr. Hoyne's promise be made and is kept by him and his successor in office, as State's Attorney of Cook County, it would not be binding upon the other District Attorneys of the numerous counties of the State. I will show how easy it is for them to pervert Gov. Whitman's intention and to proceed against Biddinger in other counties, so as to frustrate the State of West Virginia in its desire to use Biddinger as a witness, and the intention of Gov. Whitman to have him do so. You will recall on the former application the charge of larceny was made by
204 one Benjamin Lehman, concerning the stealing of $50 and a pocket-book from one William Quinn. I made considerable argument upon that complaint, which appears in the stenographic record of the hearing and also produced the affidavit of William Quinn. The claim was that Biddinger entered into an agreement or understanding with Lehman, a pick-pocket, that Lehman was to go to a prize fight at Waukegan, Lake Co., Ill., and steal $1,000 from Quinn, who would attend the prize fight and divide the proceeds with Biddinger; that Biddinger would attend the prize fight at Waukegan and jostle Quinn and help Lehman steal the money and that Lehman divided the proceeds with Biddinger, but that instead of Quinn having a thousand dollars, he had only $50.

Now, although Lehman's affidavit was laid before a Municipal Court Judge of Illinois, it is not only possible, but probable that upon Biddinger's return to Illinois, the District Attorney of Lake County will attempt to indict him for that charge,—and who know- upon how many other alleged offenses—and the animus and antipatyy against Biddinger will result in other charges in other counties in the State of Illinois against Biddinger, none of which charges is embraced in the promise of Maclay Hoyne. He will take refuge in

the fact that he had kept his promise in admitting Biddinger to reasonable bail in Cook Coounty and had not filed other indictments against him, but that he had not promised that other District Attorneys in other Counties would not find additional indictments or insist upon excessive bail, and that their conduct was entirely beyond his control.

4. Such promise is not binding on the Federal Prosecutor. By the same token, considering that Mr. Weil dug up 51 different charges of crime upon the first application of extradition, it would be a simple matter for some of these professional crooks to prefer some charge or charges under the Federal statutes, and, of course, it would be claimed that the U. S. District Attorney was not bound by any promise made by the District Atto-ey of Cook County.

205

5. Such Promise is not Applicable to Civil Actions or Civil Orders of Arrest.—It must be perfectly plain to you, as a lawyer, that every one of these pick-pockets could bring a civil action to recover moneys claimed to have been obtained by fraud or duress or coercion and in a civil action obtain an order of arrest, and hold the defendant in bail. Actions might be brought, charging him with assault and battery slander, libel, rape, seduction, burglary, larceny, embezzlement, fraud or any other of the numerous torts, and Biddinger co-ld be so plastered with civil orders of arrest, as to make it impossible for him to procure bail. If this were done, surely it would be beyond the control of the District Attorney of Cook County, and as he would not be a party to it, his promise, although kept, would not be efficacious in the accomplishment of Gov. Whitman's purpose, namely, to permit Biddinger to go unmolested to West Virginia, to testify as a witness in the criminal case pending against Weil.

6. The Governor Would be Impotent to Control.—It must also be perfectly plain to you that even the Governor could not prevent such prosecutions in other counties. Any citizen, has a right to go to a Magistrate's Court and prefer a criminal charge and obrain a warrant of arrest. Any citizen has a right to bring an action in the Civil Courts and obtain an order of arrest. No matter what may be the good faith of Mr. Hoyne, the State's Attorney, or Mr. Dunne, the Governor—and I have the very highest regard for both of them, and therefore question the good faith of neither—yet I say it is perfectly patent that they would be impotent to make effective the understanding that Governor Whitman wishes to be had, and they could not prevent the institution or the maintenance of these civil and criminal proceedings which would render nugatory the intention of Gov. Whitman and make it impossible for West Virginia to avail itself of the testimony of Biddinger upon the trial of Weil.

206

7. There is a Plain Solution Which is *Emanatly* Just and Which Would Preserve the Rights of All Parties and Make the Governor's Judgment Effective.—The intention is, if the executive warrant issues and it be sustained by the courts, upon the habeas corpus proceedings, that when Biddinger is taken to Illinois, he be admitted to reasonable bail and then returned to New York, un-

molested, so that he may go to West Virginia to testify, when wanted. He is now under $20,000 bail, furnished by the National Surety Co., in habeas corpus proceedin*t*s, upon an order of Judge Julius N. Mayer, U. S. Circuit Court Judge. A stipulation could be entered into, signed by Biddinger himself, as well as by his attorneys, adjourning the habeas corpus proceedings until two days after the disposition of the Weil case in West Virginia, when Biddinger shall appear in the U. S. Court, in compliance with his bond. As it is understood that the amount of bail to be fixed in Illinois shall not exceed the amount of bail Biddinger is now under, what good is it to send Biddinger to Illinois now to furnish new bail, if it isn't to be in a larger amount, or by a surety of greater financial strength. It would be going through an idle ceremony to do so. If bail of the National Surety Co. for $20,000 is all that the State of Illinois desires, we are perfectly willing to enter into an undertaking *here* to the effect that Biddinger will appear in Illinois to respond to these indictments, immediately after the disposition of the Weil case. If that is what the State's Attorney of Cook County desires, he can have it, without the necessity of dragging Biddinger fro*k* New York to Illinois and sending him back again to New York. The bail bond can be forwarded by the State's Attorney and Biddinger will execute it here.

I do not wish to burden you with any more upon this
207 phase of the situation, although much can be said. I think you will understand that especially in view of the decisions, it doesn't matter now, or upon what charge a fugitive is brought back to the demanding state, even though he may have been kidnapped and brought back by force, the demanding state is at liberty to indict and try him upon any other charges, and he is subject to the civil and criminal processes of all of the courts, local, state and of the entire state. So you can understand why I am apprehensive. You can see how easy it would be for a crook to get into a personal altercation with Biddinger, on the very day of his return, and after he is admitted to bail, and swear out a warrant against Biddinger for assault.

In conclusion I might also add that I am advised by Mr. Robert E. Cantwell, an eminent lawyer of Chicago, who represents Biddinger there, that under the terms of the bail bond given upon these indictments or upon any other criminal charge, Biddinger is forbidden from leaving the State of Illinois; and that in any event, even if he did attempt to leave (although it would be contrary to law and to the express terms of the bond) his surety and bail would prevent his doing so.

I hope you will pardon me for this lengthy letter, but I have a duty to perform, and I am endeavoring to discharge it to the best of my ability.

With thanks in advance for your indulgence and for your kindness and courtesy in the past, believe me

Sincerely yours,

MOSES H. GROSSMAN.

M. H. G./L.

208 June 27th, 1916.

In re GUY B. BIDDINGER, an Alleged Fugitive from the State of Illinois.

Hon. Charles S. Whitman, Albany, New York.

DEAR SIR: Mr. Isidor J. Kresel, reresenting the State of Illinois in this proceeding, has asked me to consent to an adjournment of the hearing which your Excellency adjourned until tomorrow, at noon. Mr. Koenig also joined in this request, both of these gentlemen assuring me that they have not heard from the State's Attorney of Cook County with reference to the stipulation your Honor required him to make, namely, an agreement upon his part not to try Biddinger until after the Weil case had been tried and disposed of. I told them *that* I now wish to state to your Honor that we have offered to give a bond of the National Surety Company in Chicago, in the sum of $20,000 (same as present bail) upon the State's Attorney making the stipulation you require. This offer has been made to Mr. Kresel and to Mr. Koenig, and is now made to you. It shows our absolute good faith and our desire to give the State's Attorney of Cook County what he pretends to want, namely, a bail bond to insure the appe*y*rance of Biddinger upon the indictments which are made the bases of the requisition.

We have contended and now contend that what they really want is not bail, but desire, for personal ends, to circumvent the State of West Virginia in its criminal prosecution, and to prevent the personal *promise*, as a witness, of Mr. Biddinger, upon the trial in West Virginia of Weil.

Mr. Henry Berger, the assistant state's attorney of Cook County, on last Friday, at the hearing, got into communication with the State's Attorney's office by telephone, in a very few minutes,
209 for the purpose of ascertaining whether Maclay Hoyne would agree to the stipulation you required, and then obtained a postponement only because Mr. Berger stated that Mr. Hoyne was not present*ly* at his office. Mr. Berger has since returned to Chicago and four days have elapsed, within which time Mr. Hoyne could very readily have made up his mind whether he would comply with your Honor's requirement, or refuse to do so. The fact that he has not complied may be taken as a refusal.

If your Excellency thinks that in these circumstances an adjournment is necessary, I shall be glad to accommodate opposing counsel and have agreed to do so, but it does seem to me, and I must respec*r*fully submit that our offer of a surety company bond, to be given in Chicago, upon the making of a proper stipulation by Mr. Hoyne, should have — accepted and should be accepted instant*a*, or the warrant be vacated, in accordance with your Excellency's decision.

I shall appreciate word from your Honor as to your determination of this matter, and shall, of course, appear at any future time which you may suggest. If your Honor does vacate the present warrant

it would not interfere with the making of a new application at such time as the District Attorney decides to comply with your requirements.

On Saturday, June 24th, I wrote quite a lengthy letter to the Hon. O. L. Potter, setting forth my views regarding the stipulation as I did not wish to burden your Honor unnecessarily, especially in view of the time you have given to Illinois and West Virginia in this matter, and the courtesy you have extended to counsel, which is deeply appreciated.

Very respectfully,

MOSES H. GROSSMAN.

M. H. G./L.

P. S.—I am sending a copy of this letter to Mr. Kresel.

210 Exhibit No. 37 for Identification of November 15, 1916.

Charleston, W. Va.,

June, 28, 1916.

Hon. Charles S. Whitman, Governor of New York State, Albany, N. Y.:

I am informed your Excellency decided to refuse warrant of extradition in the Biddinger case unless the State's Attorney of Cook County will agree not to try Biddinger until after the disposition of the case of the State of West Virginia against A. Leo Weil. I wish to thank your Excellency for this courtesy extended to the State of West Virginia in the effort to uphold the justice of our State. At the same time I wish most respectfully to point out that such a promise on the part of Maclay Hoyne, the State's Attorney, would be purely personal. His term of office expires this November and his successor may not feel bound by it even if he did. The State's Attorneys of adjoining counties would not be bound and the same professional criminals upon whose evidence the present criminal charges were founded would have no hesitancy in laying the venue in other counties than Cook. In fact, as I understand it, they have done so as you will I think find from a reading of the original requisition papers. They would undoubtedly also lay charges before the Federal authorities in order to circumvent your intention. The personal interests behind the present pending application for extradition would undoubtedly persuade these ex-convicts and others to bring civil proceedings in which orders of arrest would be issued upon torts alleged to have been committed by Biddinger, in an endeavor to circumvent your eminently just desire to serve the interests of my State. In spite of your best efforts, however, and those of Governor Dunne, you would both be impotent to control the situation with this animus controlling the personal interests of those seeking Biddinger's extradition. In this way they would prevent the State of West Virginia from using Biddinger as a witness against Weil. I renew my petition that if you issue your warrant to hold it at

the Executive Mansion until Weil has been tried upon my personal promise to telegraph as soon as Biddinger's testimony has
211 been concluded. This cannot prejudice the State of Illinois in the slightest degree. Biddinger is now under very heavy bail in the Federal Courts of New York in the habeas corpus proceedings and as I understand bail can and will be continued until Weil's case has been tried and disposed of. In that way the interests of the State of Illinois and the interests of West Virginia are both conserved and I will be assured of the personal presence in West Virginia of Biddinger at the trial of A. Leo Weil and Illinois will be assured of Biddinger's return to Illinois. In addition to the heavy bail to insure Biddinger's appearance, you have my solemn promise that he will do so and the pledge of the State of West Virginia. I thank you again and you may depend absolutely upon my good faith and the integrity of my State. My guaranty to Governor Dunne and to yourself is I think even stronger than any bail bond which Illinois might obtain from Biddinger.

HENRY D. HATFIELD,
Governor of West Virginia.

212 June 28, 1916.

Hon. Charles S. Whitman, Albany, N. Y.:

Robert E. Cantwell, our Chicago counsel, informed us by telegraphy and by telephone today that State's Attorney Hoyne absolutely refuses to agree with your Excellency's requirement not to try Biddinger until after the State of West Virginia has tried Weil or to make any stipulation whatever. You can confirm this by telephoning State's Attorney Hoyne or his secretary or Assistant State's Attorney Henry Berger, who appeared before you at the hearing last Friday. In these circumstances your Excellency will doubtless consider a postponement unnecessary. If you confirm State's Attorney's refusal, then we respectfully ask for the vacator of the warrant.

MOSES H. GROSSMAN.

June 28th, 1916.

Hon. O. L. Potter, Albany, N. Y.:

"Please inform Governor Whitman that I received the following telegram:

June 28th, 1916,

Chicago, Ill.

Moses H. Grossman, 115 Broadway, New York City:

State's Attorney Berger told Mr. Stewart of Surety Bond Company they will not stipulate with Governor Whitman or anyone else not to try Biddinger. Say they will try him when it pleases them to do so.

CANTWELL."

In view of this please submit my application for the vacature of the Executive warrant.

MOSES H. GROSSMAN."

213 June 29, 1916.

Moses H. Grossman, Esq., 115 Broadway, New York City.

DEAR SIR: By direction of the Governor I write to acknowledge the receipt of your communication of the 27th instant, in regard to the case of Guy B. Biddinger an alleged fugitive from the State of Illinois.

Yours very truly,

OWEN L. POTTER,
Executive Legal Assistant.

June 28, 1916.

Hon. Charles S. Whitman, Albany, New York:

Assistant State's Attorney Berger who has charge of the Biddinger case stated to Mr. Stewart of the National Surety Company of Chicago that the State's Attorney would not enter into any stipulation with Governor Whitman or any other person not to try the Biddinger case but would try Biddinger whenever he pleased.

ROBERT E. CANTWELL,
Att'y for Biddinger.

214 Exhibit No. 38 for Identification of November 15, 1916.

June 30th, 1916.

In re Guy B. Biddinger, an Alleged Fugitive from Illinois.

Hon. Charles S. Whitman, Capitol, Albany, N. Y.

DEAR SIR: On June 28th I sent a telegram to State's Attorney Hoyne of Cook County, Ill., offering a National Surety Co. bond in the sum of $20,000, as now, or cash bail, if necessary, provided he stipulates as you require. He answered, declining to make any stipulation whatever. All he would do would be to give us his "assurance" (instead of his agreement) that bonds will be "reasonable" (whatever that might mean,—because what a District Attorney in a criminal case considers reasonable, is not usually regarded as reasonable by the defendant), and I beg to call your attention to the fact that the State's Attorney does not even agree that the bail will be reasonable, qualifying that it would, with the clause "so far as I am concerned," indicating that others concerned might impose bail which might be unreasonable. I do not think this telegram meets your Honor's views or wishes, as expressed at last Friday's hearing.

I am appending hereto an exact copy of my telegram and of his reply.

Respectfully yours,

MOSES H. GROSSMAN.

M. H. G./L.

Enc.

P. S.—I am sending copy of this letter to Mr. Kresel.

215 Exhibit No. — of November 11, 1916.

Charleston, W. Va.,

July 1, 1916.

Gov. Charles S. Whitman, Albany, N. Y.:

Am informed State's Attorney Hoyne refuses to stipulate that Biddinger will not be tried until after Weil has been tried in this State also that Biddinger has offered National Surety Company bond in Chicago which Mr. Hoyne refused. This must confirm in Your Excellency's mind that my fears have been well founded.

It proves that Biddinger's presence in Chicago is wanted not for the purpose of putting in bail but for ulterior purposes and improper motives. I am certain that if Biddinger were taken to Chicago now that he would be lost to West Virginia and the ends of justice in this State would be defeated. As your proper and protective requirements have not been complied with by State's Attorney Hoyne and he refuses to accede to any stipulation whatever and also refuses surety company bail I think bad faith is conclusively established and I ask you as the Governor of a sister State entitled to equal rights with Illinois to vacate your warrant of extradition.

HENRY D. HATFIELD.

216 Exhibit No. 39 for Identification of November 15, 1916.

July 3rd, 1916.

In re Biddinger.

O. L. Potter, Esq., Executive Chamber, Albany, N. Y.

DEAR MR. POTTER: I do not wish to bother the Governor any more than is absolutely necessary, but I do not mind imposing upon your good nature occasionally.

I just wish to say that Mr. Cantwell, the Chicago attorney for Mr. Biddinger, upon being advised by us that the hearing before Governor Whitman would probably be adjourned until June 12th, saw Assistant State's Attorney Berger, and sent Mr. Biddinger the following telegram:

"Saw Berger this morning. He said he would try case if you come back on the twelfth, whenever he liked. No stipulation could bind him even if he had to get new indictments."

It is illuminating and interesting and I think you ought to place it before the Governor, when time and opportunity permit.

Yours very truly,

MOSES H. GROSSMAN.

M. H. G./L.

P. S.—I am sending a copy of this to Mr. Kresel.

217 & 218 5" July, 1916.

To His Excellency Governor Charles S. Whitman, Albany, New York.

My Dear Governor Whitman:

I have seen the record of the hearing before you on the 23rd ultimo, in which you mention the promise made that if you granted extradition in this case it would be upon the promise of the State's Attorney of Cook County, Illinois, not to try Biddinger until after the case of the State of West Virginia vs. A. Leo Weil has been tried and disposed of.

I want you to know how thoroughly I appreciate the courtesy extended to me and to my State and to assure you that in my belief your determination of this matter is just and equitable, indeed vital, to the justice of the State of West Virginia, whose rights are equal with those of our sister state of Illinois.

I have just learned that the State's Attorney of Cook County has refused to make the stipulation, notwithstanding the fact that Biddinger was at all times ready and willing to give a surety company bond in Chicago to answer to the indictment. This refusal on the part of the State's Attorney of Cook county would seem to indicate bad faith on the part of the State's Attorney's office. The offenses charged against Biddinger were committed from five to eight years ago. It is admitted that A. Leo Weil, who is under indictment in this State for attempted bribery, with the assistance of a bunch of known criminals, dug up the charges against Biddinger and laid them at the door of the State's Attorney of Cook county. Your Excellency's position that Biddinger should not be tried until the Weil case in West Virginia is disposed of, cannot injure in the remotest degree the State of Illinois, but on the other hand results in the preservation of the rights and interests of both states. This situation suggests the equitable maxim, "that he who asks equity must do equity." If the State's Attorney of Cook county is asking for the extradition of Biddinger in good faith for the purpose of proceeding against him because of the commission of alleged crimes, then that state should likewise "do equity" by allowing West Virginia to get through with Biddinger.

It seems to me that either of two things could be done which would meet your Excellency's wishes and at the same time conserve the interests of both the State of Illinois and the State of West Virginia:

1. To file a stipulation in the habeas corpus proceedings now pending in the Federal Court that the existing bail of $20,000 given by the National Surety Company for Biddinger shall continue, such proceedings being adjourned until say two days after the trial of the Weil case in West Virginia; that when that trial is concluded Biddinger will comply with the bail bond and appear in the Federal Court—habeas corpus—extradition proceedings to respond to the executive warrant of extradition. In addition to the bail of $20,000, I have given you, and I give you again, my word of honor that Biddinger will appear, and again pledge the integrity of the State of West Virginia that he will do so.

2. Biddinger will file immediately bail bond in the sum of $20,000 to be given by the National Surety Company in Chicago upon the stipulation being signed by the State's Attorney of Cook county that he will not try Biddinger until West Virginia has used him as a witness in the Weil case and until that case has been tried and disposed of.

I hope you will not think I am presumptious, Governor, in making these suggestions; but surely either of these propositions would be acceptable to the authorities in Illinois if they are acting in good faith and their sole purpose is to have Biddinger respond to the indictments in Cook county. These charges against Biddinger have been sleeping for a number of years and certainly they can sleep yet a little longer until this State disposes of the most important case ever pending in the criminal courts therein and one that means much to the public welfare of all its people—a case in which Mr. Biddinger is the most important witness.

219 & 220 It would appear to me that if either of the propositions I have suggested are acceptable to the State's Attorney of Cook county, it would raise the inference at least that the proceedings there are not in the best of faith, and that the vigilance with which they are now proceeding to extradite Mr. Biddinger is prompted by other motives than to try him for crimes committed years ago.

I want you to fully appreciate, Governor, that my only interest in Biddinger's behalf is to protect the interest of the State of West Virginia in a most important case.

Again thanking you for your courtesy, believe me, with assurances of regard and esteem,

Faithfully yours,

H. D. HATFIELD, *Governor.*

W. L. T.

221 Exhibit No. 23 of November 15th, 1916.

July 7, 1916.

Hon. H. D. Hatfield, Executive Department, Charleston, West Virginia.

SIR: In the absence of Governor Whitman, I write to acknowledge receipt of your communication of July 5th in the matter of the

extradition of Guy Biddinger, and to say that this letter will be placed before the Governor for his consideration, upon his return to the City.

Very respectfully yours,

OWEN L. POTTER,
Executive Legal Assistant.

222 Exhibit No. 24 for Identification of November 15, 1916.

STATE OF ILLINOIS,
County of Cook, ss:

Robert E. Cantwell being first duly sworn on oath states that on or about the 22nd day of August, A. D. 1916, he saw Tommy Thomas, and on or about the 20th day of August, A. D. 1916, he saw Clarence Class, who this affiant knows to be the same persons whom it is reported are witnesses in the matter of Guy B. Biddinger. And this affiant ta-ked at length to the two parties in reference to the matter of the said Mr. Biddinger, and he was informed by both Mr. Thomas and Mr. Class, that neither of them had appeared before the Grand Jury, in connection *to*, or in reference to, or to testify in the matter of the said Guy B. Biddinger, and that they had not so testified, and that any representations that either of the parties had appeared before the Grand Jury were false. That he believed the said statements made by the said parties to be true, that they were made voluntarily by the said parties, Tommy Thomas and Clarence Class. Further affiant sayeth not.

ROBERT E. CANTWELL.

Subscribed and sworn to before me this 28th day of August, A. D. 1916.

[Seal C. Turgrimson, Notary Public, Cook Co., Ill.]

CHAS. TURGRIMSON,
Notary Public.

223 STATE OF ILLINOIS,
County of Cook, ss:

Thomas C. Smith being duly sworn on oath deposes and says that he is and has been a resident of the City of Chicago, County of Cook, State of Illinois, for the past sixteen years. That he has known Mr. Biddinger since 1905, and that he has frequently seen him entering and leaving his home at 12 W. Ohio Street. That he has seen him bring his wearing apparel to and from there, and that he has talked with him, and knew personally that he resided at 12 W. Ohio Street up to and until August 1913. That he knew him to be a member of the Chicago Police Department, and knew that he was frequently out of the city on police matters, and knew when he returned to the City of Chicago he always made his residence with his mother and family, at the said 12 W. Ohio Street. That he met him and talked with — particularly on or about August 1913 at 69 W. Monroe

Street. That he roomed in the same house where the said Biddinger made his home, and knows of his own knowledge that he kept his wearing apparel and his laundry, and resided there.

(Signed) THOS. O. SMITH.

Subscribed and sworn to before me this 13th day of July, A. D. 1916.

[SEAL.] FOREST GARFIELD SMITH,
Notary Public.

224 STATE OF ILLINOIS,
County of Cook, ss:

Timothy J. O'Brien being first duly sworn on oath deposes and says that he is a resident of the City of Chicago, County of Cook, State of Illinois, and has been for twenty-nine years last past. That he is a machinist by trade, and that part of his duties are to repair gas ranges, etc. That in the course of his employment he made repairs several times at a place known as 12 W. Ohio Street, which at that time was the home of Mrs. Lucile Biddinger. That this affiant was acquainted with the family, and he knew Mr. Guy Biddinger, who was a sergeant of police connected with the police department of the City of Chicago. That he had known the said Guy Biddinger at that time about four years. That in August 1913 he spent five hours in Mrs. Lucile Biddinger's residence, and that he saw Mr. Guy Biddinger, and knew he lived and roomed there. That he saw him on many occasions prior to that in the same place, and saw him change his wearing apparel and have his meals. That he knows that that was his residence up to August 1913.

Further affiant sayeth not.

(Signed) TIMOTHY J. O'BRIEN.

Subscribed and sworn to before me this 14th day of July, A. D., 1916.

[SEAL.] ROBERT E. CANTWELL,
Notary Public.

225 & 226 STATE OF ILLINOIS,
County of Cook, ss:

Joseph P. Johnson being first duly sworn on oath deposes and says that he is, and has been a resident of the city of Chicago, county of Cook, State of Illinois, for the past fifteen years. That he has known Mr. Guy Biddinger for the past twelve years. That in April 1914 he met Mr. Guy Biddinger at the home of his mother, Mrs. Biddinger, at number 12 Ohio street, City. That on the day following seeing Mr. Biddinger at the home of his mother, he met him at the corner of Monroe and Clark streets. That on or about this time he had talks with Mr. Guy Biddinger. That at this time he knew that Mr. Biddinger was living with his mother, at 12 W. Ohio street, and that he has a room in his mother's home, and that this

was his place of residence, and further that Mr. Biddinger made this his home until the 11th day of August 1914. That on or about the 11th day of August 1914, Guy Biddinger's mother placed her furniture in storage at Reebe & Sons' warehouse, Lincoln avenue, Chicago, Illinois, and that the furniture still remains in said place. That on or about the 10th day of November 1915, he saw Mr. Guy Biddinger taking lunch with one Mr. Burns in Rector's Restaurant, Chicago, Illinois.

(Signed) JOS. P. JOHNSON.

Subscribed and sworn to before me this 13th day of July A. D. 1916.

[SEAL.] ROBERT E. CANTWELL,
Notary Public.

227 STATE OF ILLINOIS,
County of Cook, ss:

William J. Kealey being first duly sworn on oath deposes and says that he is a resident of the City of Chicago, County of Cook, State of Illinois, and has been for twelve year/ last past. That he is engaged in the hotel business. That he knows Guy B. Biddinger for about ten or eleven years. The- he frequently saw the said Guy Biddinger, and on one particular occasion, in the month of August 1913, this affiant called up the residence of Guy Biddinger at 12 West Ohio Street, in the City of Chicago, and talked to Mr. Biddinger over the phone, inquiring where he could see the said Guy Biddinger's brother. That of his own knowledge he knows he lived there and that it was his home, and that he was usually and publicly a resident of the City of Chicago.

Further affiant sayeth not.

(Signed) WILLIAM J. KEALEY.

228 Exhibit No. 1 of November 21, 1916.

Rules and Regulations Department of Police, City of Chicago, 1910.

Rule 2.

Section 7: Always on Duty.—Although certain hou-s are allotted to the members of the Active Force for the performance of ordinary duties, they will be considered as being always on duty and must be prepared to respond immediately, day or night, on notice that their services are required.

229 Exhibit No. 2 of November 21, 1916.

Rules and Regulations Department of Police, City of Chicago, 1910.

Rule 2.

Section 8: Other Business Prohibited.—Each member or employe of the Department shall devote his whole time and attention

to the business of the Department, and is expressly prohibited from following any other calling or occupation, or being engaged in any other business.

230 Before the Governor, Executive Chamber, Albany, N. Y., April 26, 1916.

In the Matter of the Application of the Governor of the State of Illinois for the Extradition of GUY A. BIDDINGER, an Alleged Fugitive from that State.

Appearances:

Moses H. Grossman, for the Defendant.
Isidor J. Kresel, Louis Marshall, Samuel S. Koenig and others in opposition to the granting of the Requisition.

Argument on this occasion directed toward the revocation of the Governor's warrant directing the return of Biddinger, which had been granted previously.

The Governor: Hearing on the requisition of the Governor of the State of Illinois for the return to that State of one Guy A.
231 Biddinger, an alleged fugitive from the justice of that State.

Mr. Grossman: Yes sir, if your Honor please.

The Governor: First I want to read for the information of those interested here, a telegram I have received from the Governor of Illinois, concerning this matter, and which came to this office yesterday, signed by E. F. Dunne, Governor of Illinois. The telegram is as follows:

"Springfield, Illinois,

April 25, 1916.

Hon. Chas. S. Whitman, Governor of New York, Albany, N. Y.:

Acting upon the written request of the Governor of West Virginia, I have concluded to give a hearing to counsel for Guy B. Biddinger upon his application to recall my requisition sent to you for his extradition. Counsel on both side- have been notified, and the hearing will take place tomorrow morning in Chicago Hotel LaSalle eleven o'clock. Cannot say whether it will be concluded tomorrow. Would therefore respectfully request that you defer action upon my request for his extradition for one week, within which time I hope to be able to determine the question as to whether or not the requisition should be recalled. The requisition was issued without any
232 hearing given to the defendant.

E. F. DUNNE,
Governor of Illinois."

I responded to this telegram, as follows:

"Albany, N. Y.,

April 25, 1916.

Hon. E. F. Dunne, Governor of the State of Illinois, Springfield, Ill.:

Your telegram received. Will postpone final action upon the Biddinger matter until further advised by you.

CHARLES S. WHITMAN."

Now, gentlemen, I desire that the hearing shall go on today, for the convenience of all of us.

Mr. Grossman: Yes sir.

The Governor: But I will not finally determine upon the matter until I am advised as to what Governor Dunne of Illinois desires to do in the matter. Who is here to oppose the granting of the extradition?

Mr. Grossman: I am here, for the application for the revocation of the Executive warrant, and opposed to me are Mr. Marshall, Mr. Kresel, Mr. Koenig, and some others.

The Governor: I suppose, technically, that you are here for the proposition; but you are opposed to the extradition.

233 Mr. Grossman: I am opposed to the granting of the requisition, yes sir.

The Governor: I will hear you first.

Mr. Grossman: Before I proceed to my main argument, may I suggest to Your Excellency that it is our intention, with your permission, to call, as a witness, a gentleman by the name of A. Leo Weil,—as a witness, I say, on behalf of this alleged fugitive. However, I think it will be conceded upon the record that he is the man who instituted these proceedings for the extradition of Mr. Biddinger.

Mr. Marshall: We make no such concession.

Mr. Grossman: All right, sir. I ask for no concession. But I wish to state to counsel that I propose to call Mr. Weil as a witness. And as he is now at the Ten Eyck Hotel, he will be good enough, I assume, as a courtesy to me, and to expedite the hearing, and to save time, to telephone him to present himself here. If not, I will ask Your Excellency to direct his appearance.

Now, he has appeared in Chicago, and he attempted—and if necessary I will produce evidence that he went out there, and that he is the one, and not the State of Illinois, who is behind this proceeding for Mr. Biddinger's return to that State.

234 The Governor: Excuse me a moment. (Conferring with the Military Secretary.) All right, you may proceed.

Mr. Grossman: Yes sir. Now I desire to ask counsel whether it is their intention to telephone to Mr. Weil to appear here, and enable me to call him as a witness, or whether it is his intention to stay away from this hearing and thus prevent me from using his testimony in Guy Biddinger's behalf?

Mr. Marshall: We have no intention whatsoever in the premises.

Mr. Grossman: Then I ask the counsel to produce Mr. A. Leo Weil, who is now at the Ten Eyck Hotel.

The Governor: Do you contend that the defendant was not in the State of Illinois and the City of Chicago during the time set forth in these indictments?

Mr. Grossman: On the contrary, I contend that he has been a resident of the City of Chicago for more than a year and a half after the offence charged here as a misdemeanor, and therefore that the misdemeanor is outlawed; and I also contend that he was a resident of the City of Chicago, and usually and publicly present there for a period of three years after the dates charged as the dates of the commission of the felonies. And I will prove by the evidence adduced by my opponents that there is no charge of crime, because no
235 information could be laid against Mr. Biddinger for the misdemeanor, and no indictment could be found against him for either of the felonies charged.

And if Your Excellency will only indulge me for a moment, I will make it perfectly plain. But first I ask for a reply to my question as to whether the learned and distinguished counsel on the other side, seeking the extradition of a citizen of this State, upon whom rests the mantle of your protection, are going to give me the benefit of the testimony of my opponent, and of their client, Mr. A. Lee Weil?

Mr. Marshall: We represent the State of Illinois, and nobody else.

Mr. Grossman: Mr. Marshall represents A. Leo Weil. He represents him, on the record.

The Governor: Very well, Mr. Grossman: If you will continue, I will take up the question as to whether you need this witness, later.

Mr. Grossman: Very well, sir. I have given them the notice, and that is all I wish to do at this time.

Now if Your Excellency please, this appears to be an application upon the part of the Governor of the State of Illinois for the extradition of one Guy Biddinger from the State of New York. The Governor of Illinois has telegraphed you that his request
236 upon the Governor of this State was made without a hearing.

I trust to show you, when I get the evidence of Mr. Weil, that he went out to Chicago for reasons which I will presently explain, for his own personal and private benefit. And there he interviewed a number of thieves, either directly or indirectly, his object being to take away from the State of New York, and to take away from the benefit of the State of West Virginia, Mr. Guy Biddinger, who is a very important, in fact the most important material, necessary and indispensable witness upon the trial of an indictment for attempted bribery, found by the Grand Jury of Kanawha County, West Virginia, against A. Leo Weil, whom I publicly and openly charge to be "the head and front of this offending," and whom Your Excellency will undoubtedly find to be so, when I get him up on the witness chair.

The Governor: Now even so, if his testimony is sufficient, and the testimony before the magistrate is sufficient to justify a warrant,

and upon that the Governor of the State was justified in issuing his warrant and his requisition, I do not see how that would affect my action, necessarily, one way or the other.

Mr. Grossman: Quite so, no doubt. But as it happens in this case, there has been no proper evidence before any magis-
237 trate. There hasn't been any indictment. And I tell you now, that what he did, what Mr. Weil did, was to go to the outskirts of Chicago, and, as I am informed, in one of the outlying districts, he found a magistrate who entertained, at one fell swoop, fifty-one complaints, or informations, or depositions, or affidavits, charging various misdemeanors and felonies, dating back from 1907 up to May 1st, 1911, which I think is the date of the last offense charged.

Now, with one fell swoop, I will dispose of forty-eight of the fifty-one complaints, which were outlawed there, by showing to Your Excellency that they are made by a man of the name of Shelby Singleton, who has absolutely no knowledge of the facts; who, though he testifies apparently as upon personal knowledge, that is to say, he does not in his affidavits state that the allegations he makes are based upon information and belief, stating *that* the sources of his information, and the grounds of his belief,—yet I think it will be conceded that Shelby Singleton, who makes forty-eight of these complaints, had no knowledge of the forty-eight different crimes referred to in his forty-eight different complaints dating back from 1907 to 1911.

And I want to say concerning those forty-eight complaints, which I will dispose of in a moment, that it is not upon those forty-eight complaints, or any of them, that Your Excellency has been
238 asked to issue the Executive warrant. But it was upon the other three. Because they knew that not even a warrant of attachment for merchandise aggregating fifty dollars in value could be legally issued upon those forty-eight affidavits, much less the exalted Executive warrant imperilling the personal liberty of a citizen of the State.

And so, wisely, they do not ask Your Excellency to base your Executive warrant upon those forty-eight complaints, but only upon the other three. And with respect to those forty-eight, I want to say that the authorities are unanimous to the effect that the warrant would not lie. And that was held in the Pople against Pler, in which the Governor of New York, having issued his Executive warrant, subsequently revoked it. And that case is reported in the State of New York Public Papers of Governor Odell, in 1902.

And now we charge, upon the question of bad faith, which I say impregnates and permeates this application from start to finish, that the purpose of putting in those forty-eight affidavits, or complaints, was not to have Your Excellency issue a warrant upon them; that their purpose was only to show their animus, and their feeling of antipathy, in order to get a Justice of the Supreme Court in
239 the County of New York to fix heavy, almost prohibitive, bail; and they asked for seventy-five thousand dollars.

So that is why, Your Honor, we have fifty-one complaints of

crime here, with no opportunity to us to examine them, and no kenning that there were only three even presumably valid and legal, three charges of crime, upon which the Executive warrant issued.

Now, I come to those three. I wish to say, parenthetically, that the application being heard in Illinois was either initiated upon the application of Governor Dunne himself, or that investigation there, the application for the withdrawal of Governor Dunne's requisition, was made upon the instance of Governor Hatfield of West Virginia.

So far as I am concerned, I want to say that I see no occasion for a hearing there. A hearing there is obviously unnecessary, in my judgment, because if Your Excellency holds, as I think you will after a presentation of this case, that you had no authority under these papers to issue it, or that you were imposed upon, you will vacate this warrant without regard to——

The Governor (int.): Let that be as it may. Rest your case on that. I do not see what authority I have to do it.

Mr. Grossman: All right. Now, the Executive warrant in this case is based upon, and recites, three different complaints.
240 The first is the charge made by Benjamin Leeman that on the 15th day of November 1908 Mr. Biddinger was guilty of the crime of larceny, is it?

The Governor: Yes.

Mr. Grossman: In that he stole fifty dollars and a pocket book of the value of two dollars from one William M. Quinn. And the affidavit of Benjamin Leeman recites that he entered into a conspiracy with Mr. Biddinger, by which Mr. Biddinger informed him that a man by the name of William Quinn, a saloon keeper, was to make a bet of a thousand dollars at a prize fight to be held at Waukegan, forty-five miles from Chicago, the prize fight being between John (?) and Tommy Staley. And that Mr. Leeman did thereupon rob Mr. Quinn of that thousand dollars.

And Mr. Leeman says that Mr. Biddinger jostled Mr. Quinn, the saloon keeper, and that Mr. Leeman stole his pocket book and its contents, but that its contents were only fifty dollars, and that he gave Mr. Biddinger twenty dollars of that money.

Now Leeman, who makes this complaint that on November 15th 1908, eight years ago almost, Biddinger conspired with him to rob Quinn, made the fatal error of not telling the truth, and it
241 will be very easy to establish his perjury here.

The fight he refers to occurred, as can be established by the newspapers on file here and elsewhere, on April 29th, 1908. Now that date is important. April 29th 1908. It is important because it is conceded upon the papers filed before Your Excellency, that on the 10th of May 1911 Mr. Biddinger was usually and publicly a resident of the State of Illinois, and was not then a fugitive from justice.

Now if Mr. Biddinger was on the date they last mention, May 10th, 1910, a resident of the State of Illinois, if he was on the 1st of May, 1911, as they admit in these papers, a resident of Chicago, and this larceny occurred on April 29th, 1908, and there can't be the slightest question about it, because they have fixed the occasion,

then, under the statutes of Illinois, as they well know, no indictment can be found for the following three years after the commission of that felony.

And if no indictment can be found, no Governor will send a man back to go through the formality of meeting a Police Magistrate and having him say, "I am pleased to meet you, but I do not need you.

But I go further, and I will show Your Excellency by the very books they have brought here from the City of Chicago, that
242 the statements contained in all of these affidavits, that on the 1st of May 1911 Mr. Biddinger fled from Illinois and has kept himself outside of that State, is absolutely, palpably, and wickedly false and untrue. I say I will prove it by their record.

The Governor: Isn't there a charge here of a crime committed in 1911?

Mr. Grossman: Now with reference to the charge of May 1st, 1911, made by Ike Kline, another convict who was uncorroborated and unsupported, let me say this: That the State of Illinois, through its statutes, holds that this charge, being a misdemeanor, is outlawed after eighteen months.

Now eighteen months after May 1st, 1911 brings us to November 1st 1912, does it not? Now I will show you by the books of the Police Department of the City of Chicago that on that date Mr. Biddinger was a Detective Sergeant employed by the Police Department there, on its payrolls, and paid money. I will go further, and I will show you that a year after the outlawing of that crime, a year after it was outlawed, Mr. Biddinger was promoted from the office of Detective to the office of Detective Sergeant of Police, for meritorious service, because of his honesty and integrity and loyalty, and that the date of his promotion was November 15th 1913.

I want to say to Your Excellency that in all of my experi-
243 ence, extending over a quarter of a century, I have never met a case so trifling, and such an insult to the asylum State, as this application for the extradition of Mr. Biddinger.

Now I have told Your Excellency that with respect to the complaint of Ike Kline, he says that on May 1st 1911 Mr. Biddinger permitted him to escape while in his, Mr. Biddinger's, custody as an officer; that the affidavit first is made by a man who says that he is a professional thief, and a man who has served a term in prison. He does not get one decent citizen to support him.

Now, he made a fatal mistake. On the 1st of May 1911, when he says he was arrested by Mr. Biddinger, and Biddinger permitted him to escape, Mr. Biddinger was not in the State of Illinois, and fortunately he can prove it by the registers at hotels at Avalon, Catalina Islands, by the Sheriff of Avalon, by the evidence of a detective, by the evidence of three other and very respectable citizens, by the public records, and by the records of the Police Department.

Here is a picture (showing to the Governor) which Providence seems to have sent to Guy Biddinger, because he rests under God's protection, because his cause is true. On the 1st day of May he was at Catalina Islands, and won a prize, and had his picture taken.

244 If he was in California on the 1st of May 1911, how in God's name could he have arrested Ike Kline in the City of Chicago and have permitted Ike Kline to escape?

I offer in evidence this photograph, and the inscription which reads: "White Sea Bass caught by G. B. Biddinger of Chicago Illinois. Capt. Geo. Michaelius, Catalina Islands, California. 5/1/11." Which latter represents I presume the day, month and year.

Mr. Kresel: One minute. I doubt whether this is the time to offer anything in evidence as yet. I think it would be more orderly, if Your Excellency please, to offer evidence a little later in the proceedings.

Mr. Grossman: Now to further confirm this, and let me say to Your Excellency, and I want to digress for a moment, that his presence in Catalina occurred in this way: On April 11th 1911, about three weeks before the date set in Ike Kline's complaint, William J. Burns, a detective of national reputation, called on Chief of Detectives Stephen B. Woods in Chicago Illinois, and he said, "give me your best detective, a man who is honest and able." And Chief Woods said, "I will give you Guy Biddinger." Guy Biddinger was thereupon ordered by Chief Woods to go with Burns in order to uncover conspiracy which involved a large part of this Nation, and he was engaged from April 11th to May 10th, a
245 period of thirty days, during which time he arrested John J. McNamara, J. B. McNamara and Ortie MacNanigal, which men he apprehended and himself conveyed to Los Angeles California. He arrived at Los Angeles April 26th 1911, and came back to Chicago on May 10th 1911. So that it is indisputable that he was not in Illinois at the time set by Mr. Ike Kline.

Now we will pass over Ike Kline to the next charge, and that is the one I was considering when Your Honor asked me about the date in the Kline case, and that is Benjamin Leeman. Now Benjamin Leeman charges, as I told you, larceny. Leeman is an ex-convict, and he is uncorroborated. That fight of which I told you, and in which the alleged larceny took place, occurred in 1908, on the date of April 29th, 1908.

Now I want to call Your Excellency's attention to this important fact. I am not going to be involved in any controversies on the question of fact as to when that larceny occurred. I take the statement in Leeman's affidavit specifying that particular time, and saying that it was at that time at which he stole that pocketbook. That fight, no doubt, had already occurred in April.

Now let us go a step further. Leeman complains that a man named William Quinn has been robbed. I have just had brought to me from New York Quinn's affidavit. Quinn doesn't say that he was
246 robbed of any pocketbook and fifty dollars. He doesn't say that he was there to make a bet of a thousand dollars. Now Quinn is a reputable man. He has never been convicted of any crime. He is not a self-confessed perjurer. He is a decent citizen. He says he was robbed of a card case. It contained no money. Biddinger didn't jostle him. He didn't lose any money.

Now if Quinn wasn't robbed of a pocketbook, and he didn't lose

any money, how in God's name could Mr. Ben Leeman have given Biddinger part of the proceeds of the money which Leeman didn't get?

Now isn't it absurd to ask the Governor of this State to take a citizen and send him back to trial upon a charge of this character, made by a crook, of larceny upon a man of the name of Quinn, when Quinn comes forward and said "I was not robbed of any money"; "I was not robbed of my pocketbook and fifty dollars; I lost nothing excepting a card case"? It is absolutely absurd.

Now, coming to the last complaint, made by Christian P. Bertsche, that on August 1st, 1909, Mr. Biddinger accepted a bribe, on August 1st, 1909, from a crook of the name of Tommy Thomas. Now Tommy Thomas, he doesn't make any affidavit. He doesn't say that he gave any bribe to Mr. Biddinger; and Bertsche doesn't say that Tommy Thomas gave any bribe to Biddinger.

247 Bertsche says that Tommy Thomas gave a bribe to him, Bertsche, to be given to Biddinger, and that he, Bertsche, gave it to him.

Now let us analyze that. Who is Bertsche, who comes to the State of New York and asks the Governor to send a citizen to Illinois to be tried? Bertsche is a man who has written a series of articles, which we have here, for the evening papers. I think he confessed that, from the time he first imbibed milk from his mother's breast, he was a criminal; that he has served in a dozen or more penitentiaries—from Paris, France, to Tennessee, to Wisconsin, to Pittsburg, all over the country.

He says in his article that he took the witness stand and perjured himself. And he says to Your Excellency that he got money from Tommy Thomas. He says in his article that he has been a receiver of money all his life from crooks; and the payment to Biddinger rests exclusively upon the testimony of this jail bird Bertsche.

Is it conceivable that men who stand well at the Bar, lawyers of station, can come into Court with papers of this character, three complaints, entirely disconnected, one of larceny in 1908, one of bribery in 1909, and one for a misdemeanor in 1911, all three made by crooks, unsupported, and ask a decent, respectable, honest man who is

248 lifted to the highest gift within the power of the people of this State, to unfrock him of the protection that belongs to him as a citizen and voter of this Commonwealth, and order him back for trial upon charges which no reasonable or reasoning man can assume will ever result in anything than prompt dismissal?

Now let me ask Your Excellency, or Your Honor, to apply to this case the same reasoning which you applied to every problem you had on hand in every office ever accorded you as a gift from the people. You were a City Magistrate. Now an affidavit is presented to you, take them each singly, by a man who comes before you and says "my name is Bertsche. I am a crook. I have served time in all counties, or prisons. I have perjured myself in Court, and I have advertised it. I want you to issue a warrant"—not a warrant of extradition, Your Excellency, but an ordinary warrant—"against a man who I say took from another man named Tommy Thomas a bribe through me."

Now he didn't get it. Tommy Thomas didn't give it to this man. "Tommy Thomas, City Magistrate Whitman, gave me money, and I assure you, I give you my word, that I gave it to Biddinger." And you say, "Well Mr. Bertsche, having served in prison so long, and so often, and confessing to me that you are a perjurer, I would like you to tell me whether you have any corroboration. Did anybody
249 see you give any money to Mr. Biddinger?" "No, nobody, saw it." "Have you any letters, or corroborative evidence?" "No," I have nothing, only my word."

You, City Magistrate Whitman, would say, "Depart thee hence. I would not issue a warrant, because I would not hold him."

Now Leeman comes along in a day or two. And Leeman says, "City Magistrate Whitman, eight years ago a prize fight occurred, and I robbed a man by the name of Quinn, and I got fifty dollars and a pocketbook. I gave Biddinger twenty dollars, and I want Biddinger arrested."

The Governor: I would say (indistinct).

Mr. Grossman: And I bring Quinn around, and Quinn says "I did not lose any pocketbook, and no money." You would issue no warrant, especially as I told you it was outlawed (indistinct).

Now along comes the third man, the following day, the man by the name of Kline. He says, "I am a convict." He says, "I am complaining to you, City Magistrate Whitman, that Biddinger, who is no longer a Police Officer, on May 1st, 1911, arrested me, charged with pocket picking, and he allowed me to escape. Now that was an awful thing for Biddinger to do, to allow me to escape, so I am coming to you as a Magistrate, and I am complaining against
250 him, and I say I want him arrested because he allowed me to escape." And you say, "Well it is a crime for an officer to allow a prisoner to escape. Have you any corroboration?" "No." "Are you a jail bird?" "Yes." And so on. Would you issue a warrant?

Now, I say, however, if a Magistrate did issue a warrant,—some magistrates are in a hurry in the stress of business, and overlook, or haven't time for examination—and he comes before a magistrate for examination, and these facts are analyzed, would the magistrate hold him?

Now, you are no longer a City Magistrate, but you are a District Attorney, and a magistrate has made up a case before you as District Attorney, and counsel comes in and says, "District Attorney Whitman, there is a complaint against my client, and the complaint is the complaint of a crook, and uncorroborated. I have independent, honest evidence to disprove it." And you say, "Bring it along, and state it now to the grand jury"; and Quinn marches in there. Would you allow an indictment to be found. Would a grand jury indict? No, you would not. Your record as District Attorney shows that you were too fair to allow an indictment to stand against a man in those circumstances. Even imputation of the charge of crime is injurious.

251 But supposing, in your absence, an enthusiastic Assistant permitted an indictment? Would a grand jury indict upon

that evidence? Certainly not. Juries are endowed with reason. And if they did, would the Court stand for it?

I stand before Your Excellency now, and I say that of the fifty-one complaints, forty-eight are disposed of without even dignifying them with an argument; and of course they are no part of your Executive warrant. But your Executive warrant is based on these three separate charges, of larceny, bribery and misdemeanor; larceny in 1908, refuted by Quinn, whose affidavit is here; bribery in 1909, and misdemeanor in 1911.

One more word, and I am through. Now they say in their papers, by men who don't know, and who can't know, that Mr. Biddinger fled from Illinois on the day that he let Quinn escape, on the 1st of May, 1911.

I have told you that the records at Catalina, and of the Police Department, and the evidence of reputable citizens, shows that he was not, that Biddinger was not in Illinois on May 1st, 1911. Now I go further, and I say to Your Excellency that Mr. Biddinger was appointed to the Police Department on January 11th, 1903. That is established by these books here present. That on February 17th, 1908, he was made a Desk Sergeant. That on April 11th,
252 1911, he was assigned by Chief Woods to Mr. Burns and entered upon the dynamiting cases in California. On August 1st, 1911, he applied for, and obtained, a furlough from the Chief of Police, for four months. To obtain that furlough it was necessary for him to make a written application, under the rules of the Department; and that application is undoubtedly here.

I call upon my opponents to produce it. When that furlough expired, on December 1st, 1911, he applied for, and obtained, a furlough for one year. That was granted. When that expired, on December 1st, 1912, he again applied for, and obtained, a furlough for another year. When that expired, on December 1st, 1913, still continuing to be a Detective Sergeant of Police, recallable at the pleasure of his Chief, coming in and going out of Chicago, frequently, he obtained another furlough for a year, expiring December 1st, 1914.

Now on January 25th, 1914, he resigned as a member, as a Detective Sergeant of the Police Department of the City of Chicago. Now look at the absurdity of this thing,—presenting affidavits of men who do not know—Leeman, Kline and Bertsche, who swear unequivocally, without the slightest hesitancy, that Biddinger, I quote, "has been without the borders of the State of Illinois since," as stated, "the 1st day of May, 1911." Then we find that he has been
253 regularly employed, not by a stranger, but by the municipality, established by records, paid by the Commonwealth.

And we find this very anomalous situation, that Guy Biddinger, who fled from the State of Illinois, according to my friend's affidavit, on the 1st day of May 1911, is promoted on November 15th 1913 to a higher office in the Department he served so well.

I am advised by my associate, Mr. Butler, that Mr. Biddinger in August, September, October, November and December 1912, and in January and February 1913, worked full time, and that he was promoted on October 11th 1913 to First Grade Detective.

But not content with ferreting through the mud and slush of crime in Illinois, and out of the thousands of crooks finding three who are ready to do the bidding of a very interested person, they come to the family of Mr. Biddinger, his former wife having obtained a decree of divorce against him, and they get Hill, his brother in law, his former wife's brother, to make an affidavit of non-residence since the 1st of May 1911. It is since May 1911—when, as the fact is, as we will prove beyond peradventure, that Mrs. Biddinger, his former wife, actually lived with him in a house where he paid rent for many many months after May 10th 1911;

254 the fact being that on September 20th 1912, when Biddinger arrested a man named Diekelman in Chicago, the arrest resulting from the dynamiting cases, a Clerk who roomed with McNamara.

Mr. Biddinger: (Indistinct.)

Mr. Grossman: His wife, and Hill and his wife, were there at the house where he was living with his wife, and talked to people.

Now I say that Biddinger, for ten years, if Your Excellency please, for ten years, headed the efficiency list of the Chicago Detective Bureau. He made more arrests and got more convictions than any other man in the Bureau. I think I can say, without exaggeration, more arrests and convictions than any ten or twenty men in the Bureau.

Isn't it natural that these men, whom he had arrested, whom he had prosecuted, should turn around and wreak their vengence upon him by making an allegation in an affidavit, which is nothing to them, especially when it is sought by a man of wealth and station, who has a private axe to grind?

I say that that is not enough on which to issue the solemn, sacred writ or warrant of extradition. And I am going now to tell you, to tell to Your Honor, what I am driving at, and I think this is important. It explains why you are troubled with this extradition.

255 Mr. Biddinger was compelled to testify as a wit- before the Grand Inquest of West Virginia. As a result of that inquest, Mr. A. Leo Weil was indicted for attempted bribery. Now Mr. Weil, through eminent counsel who are present, or through counsel associated with him, obtained a writ of prohibition to restrain the trial court from proceeding with the trial of that indictment. I understand that that prohibition was allowed, but that on appeal it was reversed by the Court of Appeals. And that went on up, and an appeal is now pending to the Supreme Court in Washington, on a writ of error.

Now, Mr. Biddinger is the most important witness. He is the corner stone of the entire case. I am advised that a telegram has been sent, or will be sent to Your Excellency by the Governor of West Virginia. The Governor of West Virginia presents this attitude, and I am now speaking for the Governor of West Virginia, and not for Mr. Biddinger. His attitude is, that Mr. Biddinger is an important witness in a very important prosecution against Weil. If Biddinger goes back to Illinois because of the machinery put in

motion by Mr. Weill, what will happen there may be readily imagined. Bail in fifty-one cases, by a magistrate, say three thousand dollars in each case; that would be a hundred and fifty-three thousand dollars. Open to civil orders for arrest, and
256 larceny, or conspiracy, and robbery, and what not. Ten thousand in each case—a hundred thousand more. Two hundred and fifty-three thousand dollars. And as rapidly, and as quickly as Mr. Biddinger is discharged on bail in these cases, it is a very easy matter for this man, or for these men, who have no compunction for the sanctity of an oath, to bring other complaints.

Now I say this, that if he goes back to Illinois his life probably won't be spared, because it is not safe for him to be in Chicago. The antagonism that is created by a man of his activity in the Police Department, may be well imagined. If his life is spared, he will be sloughed up in jail, and unable to regain his liberty until he is tried and acquitted, as it is perfectly obvious he must be.

Is it fair, however, to Biddinger? Is it fair to the State of West Virginia to allow the State of New York to be made the cat's-paw, to pull the chestnuts out of the fire for designing people, for private and personal ends? Every Governor has held that where it appears before him that the prosecution is instituted for personal and private purposes or gain, that that application is not made in good faith. He will not append his name to the sacred warrant of extradition, the highest writ in our State.

Can it be said that an application for a warrant of ex-
257 tradition, based upon these palpably false and trivial affidavits of self-confessed crooks and perjurers, with a personal motive behind it all, is made in good faith? The only time that good faith can ever be claimed is when there is a probability of a conviction.

Now I do not say, if you were confronted by a case in which there was an issue of fact as to whether a man could or could not be convicted upon the evidence, that you ought to say he could not be extradited, in the absence of bad faith. But I do say, and with all the emphasis I can possibly command, I do say to you, Governor Whitman, as sincerely and as truly as I possibly can, that it is your duty to throw the mantle of your protection over this man, and to prevent his being legally kidnapped to the State of Illinois, there to forfeit his liberty or his life upon the mere ipsi dixit of a City Magistrate, and the evidence of three crooks, charging three separate crimes, which are false in fact, and outlawed by the statute, upon which no indictment can be found, and which cannot be maintained.

I have other observations to present, but I think I have taken up enough of Your Excellency's time, unless my associates feel that there is anything else I ought to say.

258 Mr. Biddinger: I just want to call Your Excellency's attention to that book of Ortie McManigal's, written in February 1913, in which he says that we did not arrive in Los Angeles until the 26th of April. It would be a physical impossibility to get

back to Chicago at the time this crime is alleged to have been committed. (Showing book to Governor.)

Also the inscription on this picture. One of the persons in that picture is the Chief of Detectives for the District Attorney of Los Angeles; another a Detective Sergeant at Police Headquarters; and the other the Sheriff. That was taken on the day set out by these two pickpockets.

Mr. Kresel: May it please Your Excellency, I fear that Mr. Grossman has entirely misconceived the purpose of this proceeding. I take it, and it is well established, that the asylum State will not go into the merits of the charges which are made against a fugitive from justice; that the only two propositions that the Governor of the asylum State has to consider are, first, whether a crime is charged, and, second, whether the person is a fugitive from justice.

Now, Your Excellency put a question to Mr. Grossman very early in his argument. You asked him whether it is denied that
259 Mr. Biddinger was in Chicago during the times that these crimes are alleged to have been committed. And I understood Mr. Grossman to say that it was not enough, but that on the contrary it was claimed that he continued to be a resident of Chicago for two or three years thereafter.

Mr. Grossman: You are mistaken, Mr. Kresel.

The Governor: He is correct as to the fact.

Mr. Grossman: I say, as to the first of May——

Mr. Kresel: I won't take advantage of any statement that you made.

Mr. Grossman: I am sure of that. On the 1st of May 1911, I stated that Mr. Biddinger was not in the State of Illinois, and could not have been. He was in California. But I do admit, and will admit now, for the purposes of this record, that he was a resident of the State, and of the City of Chicago, and in and out of that State, constantly until the 21st of August, 1914.

The Governor: That is not the question, as I understand it. The question is as to whether he was there at the time this alleged crime was committed.

Mr. Grossman: He was not there on that date.

Mr. Kresel: Now, then, with Your Excellency's permission, I desire to answer two or three of the propositions advance- by Mr. Grossman. The first one is as to the dates of these three
260 charges. He took up the first one and proved to his own satisfaction this, that the date therein stated could not have been the time when the crime was committed. That is the charge of grand larceny, and it is claimed that that was committed on the 15th of November 1908.

By some process of reasoning, Mr. Grossman arrived at the conclusion that the prize fight in question was held on the 29th of April 1908. And I think he said that the affidavits before Your Excellency show that it was a certain time, between two certain men, and that the public records show that that particular fight occurred on the 29th of April 1908.

I looked at the copies of, my copies of these requisition papers, to see whether I had been mistaken, and then I looked at the originals which are before Your Excellency. But I do not find in these papers any reference to any particular fight. The only reference is that it was a fight at Waukegan, Illinois. It doesn't state that that fight was between any two particular persons so that they can be identified. There are certain first-hand references, but no April 29th 1908. There is nothing to show that this fight did not take place on the 15th of November 1908; and further, even if there were, the rule in all civil jurisdictions, as it is in New York, is that unless the date alleged in the indictment is of the essence of the
261 crime, any date within a reasonable length of the time alleged, is sufficient to uphold the indictment.

Certainly Your Excellency is not going into the question of the date of this particular charge, now.

Mr. Grossman: How about Quinn's affidavit, which says that he was not robbed?

Mr. Kresel: Pardon me. I do not know of any affidavit of Quinn. There isn't any such before Your Excellency.

Mr. Grossman: (Indistinct.)

Mr. Kresel: I am not concerned with that. I am answering to what the papers show. Now as to the proposition with reference to the crime on the 1st of May, 1911,——

The Governor: Apparently they admit that on the 10th of May 1911 Mr. Biddinger was in Chicago.

Mr. Kresel: They say he left Chicago on April 11th.

Mr. Grossman: And returned on the 10th of May.

Mr. Kresel: So that, even assuming that there is a mistake in the information, and that it said May 1st, and should have been May 10th, certainly the 10th of May is not so far away from the 1st of May, that Your Honor is going behind the affidavit and the complaint in the requisition of the Governor, and to discharge this man because the date is not specifically set forth.

262 As to the other charge, of bribery, it is made as of August 1st 1909. I haven't heard any complaint made that that was not the proper date. I haven't heard it claimed that on August 1st 1909 Mr. Biddinger was not in Chicago.

So that, then, assuming that Your Honor will hold that the crime of larceny, alleged as of the 15th of November 1908, and the misdemeanor as of the 1st of May 1911, it could not be construed, on account of the variance of date, that there is any assault made upon the charge of bribery.

Now, Mr. Grossman, I think, has gone a little further than he wanted to go with reference to Mr. Biddinger's presence in Chicago. He has now told Your Excellency that, beginning with the 1st of August 1911, Mr. Biddinger was actually and physically absent from Chicago and the State of Illinois. He has told Your lency that on the 1st of August 1911 he obtained a four months furlough. He has told you that on December 1st 1911, when that furlough expired, that he obtained another one for a year.

He has told you that in August 1912, when that furlough ex-

pired, he obtained another one for a year, and then in December 1914, resigned.

263 Now then, much has been said about the question of the statute of limitations. I contend that Your Excellency will not go into that question. The statute of limitations is a question of defense. All matters of defense must be referred to the demanding State, and will not be tried in the asylum State.

But, assuming that Your Honor would try that, doesn't it appear, from the admission of Mr. Grossman, that if Mr. Biddinger was away from Chicago, in the State of Illinois, beginning with the 1st of August 1911, then under their statute, which prevents the statute of limitations from running against a crime where the person charged is not usually and publicly a resident of the State, each one of these other crimes would not be barred by the statute of limitations?

As for the grand larceny charge, the statute would not bar it until November 1911. But we have the admission that, beginning with the 1st of August 1911, he had his furlough. The other two crimes have only to 1908. They would not be barred.

I do not think it is necessary now, if Your Excellency please, to go—Mr. Marshall calls my attention to the fact that there is before your Excellency two affidavits, that there are before your Excellency two affidavits, from which it would appear, notwithstanding

264 the claim made by Mr. Grossman that Biddinger left Chicago for New York on or about the 10th of May 1911. That is taken from the record of a trial held in Chicago in the divorce proceeding between Mr. Biddinger and his former wife. The testimony there was given under oath, and it is before your Honor in the certified form, and we have a certified record of it. He remained away from Chicago, and on the 1st of November he returned to Chicago.

Now as to the contention that Mr. Biddinger remained a member of the Police Force of Chicago, and indeed was promoted in October, I think, 1913, the facts are that Mr. Biddinger nominally remained a member of the Police Force, being absent on these furloughs.

The promotion, of which so much is made, seems to have been an automatic promotion under a statute passed by the State of Illinois, providing that certain Police Officers who held a certain grade on the particular date when that statute took effect, should automatically be promoted. And although Biddinger was away from Chicago, and wasn't doing any service for the Police Department of Chicago, he was automatically promoted to the position of Detective Sergeant.

Now the fact that he remained a member of the Police Force, even assuming the fact that he remained a resident of the

265 State of Illinois, would not prevent the statute of limitations from operating. Because, according to their statute, a person must be usually and publicly a resident of the State of Illinois, and their authorities, their cases, have interpreted that statute to mean that a man must be physically present in the State of Illinois to

have the statute barred, to have the statute of limitations run against him.

There isn't any such thing as constructive presence for purposes of extradition, or for the purpose of having the statute of limitations operative, as Your Excellency well knows.

Now it seems to me that after this extended argument of Mr. Grossman's, I think we might well employ our time by hearing some evidence to bear out the many statements he has made. And we should be very glad to meet it.

Mr. Grossman: I want to say, Your Honor, in answer to that very sophistical remark of my friend, Mr. Kresel, that I do not care whether this prize fight occurred in April 1908, as we claim, or in November 1908, as they claim. Mr. Quinn is a man, or the man who they say was robbed. Quinn is the only man who has the right to come in and invoke the criminal law for his protection. Here is Quinn's affidavit. Quinn says he was not robbed. He lost a card case, but there was no money in it.

266 Now why quibble about this? Will a jury convict Biddinger? A decent respectable man, upon whom the breath of suspicion has never rested, upon the evidence of Leeman, whether Leeman says he robbed Quinn in May 1908, or June 1908, or July, or November? Quinn says he was not robbed, and that he didn't lose any money. Leeman couldn't have given any money to Biddinger.

Now, as to the furlough. The fact that Mr. Biddinger applied for and obtained a furlough upon the dates we have outlined, does not mean, as Mr. Kresel would wish Your Excellency to infer, that Mr. Biddinger was out of the State of Illinois during the life of those furloughs. On the contrary, I think he obtained a furlough on August 1st, 1911, which furlough was renewed until he resigned in January 1914. During that period of almost three years Mr. Biddinger was constantly in the State of Illinois, and a resident there, being a Police officer. He could not be a Police Officer unless he was a resident of Chicago Illinois, paid by the Commonwealth, under orders of his Chief; and he could be recalled for duty at any time.

But I hold in my hand a check, an engraved book, entitled, "Department of Police. City Employees. Street Railway Ticket. G. B. Biddinger. Issued on August 21st, 1912. For future use.

267 No. 201. Precinct Number. Signed by the Detective Bureau. John McWeeny, General Superintendent."

If he weren't a Police Officer in 1912, which is five years after the date chosen by my friend as the date of this charge of larceny, he would never have gotten his official book.

But I go even further. I call upon Mr. Kresel to produce now the furloughs, the application for each furlough signed by Mr. Biddinger, upon which his furlough was granted. I call upon Mr. Kresel to produce the books of the Police Department which he has brought here from Chicago, showing the time when Mr. Biddinger was actually employed in the Department, having served in August,

September, October, November and December 1912, and January and February 1913, full time.

The Governor: That is not contended.

Mr. Grossman: But if he was publicly and usually a resident of——

The Governor: That doesn't show that he was publicly and usually a resident because he was a member of the Police Department.

Mr. Grossman: If he worked full time, and drew pay?

The Governor: Does that show that?

Mr. Grossman: Absolutely, sir. Yes sir. And that was five years after the date fixed by Mr. Kresel, and clearly it is outlawed,
268 and no indictment——

The Governor: Is there any such evidence?

Mr. Kresel: What is his claim, that the book shows what?

Mr. Grossman: Our claim is that Mr. Biddinger, being then a Detective Sergeant of Police, employed and paid by the Commonwealth of Chicago, Illinois, was actually doing work as a Detective Sergeant in the months of August, September, October, November and December 1912, and January and February 1913; that he worked full time. Every day. And I am advised——

The Governor: He was in the city of Chicago?

Mr. Grossman: He was in the city of Chicago. If your Excellency please, he was assigned by his Chief for temporary work on these outside matters.

The Governor: I understand that.

Mr. Grossman: And for these one, two, three, four, five, six, seven,—Mr. Biddinger, you explain that to the Governor.

Mr. Kresel: One minute. I ask that Mr. Biddinger be sworn, if he is going to give any testimony in this case.

Mr. Grossman: All right, swear him. He is not trying to get away.

Mr. Kresel: Now, no grand stand plays. Let us conduct
269 this proceeding as lawyers. I am sure the Governor will.

The Governor then proceeded to administer the oath to Mr. Biddinger.

GUY B. BIDDINGER being duly sworn as a witness in this proceeding testified as follows:

Mr. Biddinger: In July 1911 Governor, the District Attorney of Los Angeles wrote a letter to the Police Department of Chicago, asking me to come out and co-operate with him in gathering evidence against the McNamaras. I went to the Chief's Office, the Chief of Police, on the 31st day of July, 1911, and I there prepared a telegram in my own hand writing, which they claim they have, and the Superintendent of Police O. K.'d that so that I could get away for four months.

At the expiration of that time the District Attorney of Los Angeles assigned me to look for a man by the name of Frank Eckoff. He was McNamara's partner. For two months I stood waiting daily at the General Delivery window of the Post Office in Cincinnati for

him to call for a letter which we had fixed up for him. And I finally got Eckoff, and had him in the City of Chicago on the 31st day of December 1912, when the McNamaras confessed.
270 And then I was released by the District Attorney of Los Angeles, and reported back to the Police Department.

And then I asked the General Superintendent for another year's furlough, which I had to go to his office to get. And at the expiration of that furlough I called upon him the second time, and told him that I was making more money with Mr. Burns than I was with the City, and asked for another year's furlough, and he granted to me that furlough.

This application, or these applications, I had to go there personally and request them myself.

In November, which is four months ago, I was in Chicago with the Superintendent, the Chief of Detectives, and the Chief of Police, there.

271 Cross-examination

By Mr. Kresel:

Q. You were actually working in Chicago?

A. Yes sir.

Q. Up to when? You were actually engaged in the Police Department of the City of Chicago during the year 1912, as Mr. Grossman has said?

A. Yes sir.

Q. Daily?

A. I can't recall that, but Governor——

Mr. Kresel (int.): Indistinct.

The Witness: A very important murder case which took place was the date that one of those labor sluggers killed another labor slugger. I have been trying to get the records on that. On that date I arrested two men.

Q. You were actually engaged in the Police Department of the City immediately subsequent to the first of May 1911. Were you there during the rest of the year of 1911?

A. I left Chicago for Toledo, Ohio, on the same train with Mr. McMonigle, on the eleventh of April 1911. I got back into Chicago the morning of the thirteenth of April 1911. And I guarded McMonigle, and McNamara on the 22nd day of April, and I left on the train that night with Mr. (indistinct)——

Q. And went to Los Angeles?

A. No, to Indianapolis, Governor. I got there on Saturday morning, and took J. J. McNamara to the Union headquarters at two o'clock in the afternoon. I took him before Judge Collins at four o'clock, and the Judge turned him over to me. And then I
272 took an automobile at four o'clock and went that night to Terre Haute, and arrived there at three o'clock in the morning. I arrived in Los Angeles on the 26th of April 1911 at four o'clock in the afternoon.

Q. And you returned about the 10th of May?
A. On the morning of the 10th.
Q. And you were from the 10th of May on, were you, in Chicago during the rest of the year?
A. Until the 31st day of July.
Q. You were in Chicago?
A. Yes sir.
Q. Doing Police duty?
A. Yes sir.
Q. After that were you in Chicago—did you perform police services in Chicago?
A. I came back at the expiration of my four months' furlough. That was on the 1st day of December; and I went to the Chief of Police and told him that I was getting twice as much by working for Mr. Burns as I was by working for the city, and requested him to give me another year's furlough; and he gave it to me.
Q. So that you didn't do P-lice duty in Chicago during the year 1912?
A. Only some investigation work in connection with the Burns agency, like looking for forgers, and bank robbers, and things like that.
Mr. Grossman: Did you live there and have a residence?
The Witness: Yes sir. I had had some trouble with my
273 wife, Governor, and I went to live with my mother at No. 12 West Ohio Street, and I lived there until the 21st day of August 1914, when I brought her to New York.
Q. During that time you were in New York, and engaged with the Burns Agency in New York?
A. I would go away for a month or two. I went away when I was in New York, but it used to cost Mr. Burns eight or ten dollars a day for subsistence, and I thought that was not necessary.
Mr. Grossman: You were paid by the City of Chicago for your work?
The Governor: You worked for me during that time.
The Witness: Yes sir. Just as soon as I was through with that, I was sent back. Then I came on another time for you.
Mr. Grossman: Were you under the supervision and control of the General Superintendent of Police during all this time—you were, were you not, and delivered your resignation to him in February, 1914?
The Witness: Yes sir.
Mr. Grossman: You were under the pay of the City of Chicago during all of that time?
The Witness: Yes sir. And the furlough states this: I hand in my resignation if I don't report back for duty—if I make applica-
274 tion to the 1st day of August 1911, to the first day of August 1912, that acts as my resignation if I don't report at the expiration of that year. And I reported each day to the Chief of Police, and renewed my application.
Mr. Grossman: Were you in and out of Chicago during all of this time?—until you resigned from the Department?

The Witness: I have my diaries for four years showing each day where I was at.

Q. What years are those?

A. I had this—a copy of my expense account (showing to Governor). This is 1914, and this 1913; and here is the first year.

The Governor: Does that show where you were?

The Witness: Yes sir. I will explain that to you Governor Whitman. (Indistinct—showing the Governor.) Have you got that list there, as to the time I was in Chicago? It will save the Governor's time, and yours too.

Mr. Grossman: (Handing list to witness.)

Mr. Kresel: Are you through, Mr. Grossman?

Mr. Grossman: Yes sir. But wait a minute, Mr. Kresel. In answer to Mr. Kresel that he obtained a furlough, and assuming that you meant he was not in Illinois, Mr. Biddinge has now explained it to your Excellency that he was in and out of Illinois constantly. I wish to ask him whether he was paid by the Check of the City of Chicago.

The Witness: The way that was done, was this: The
275 Burns Agency paid the City of Chicago for my services, and they would make out a pay check for me to the Burns Agency, and they would return it less a dollar and a half for the pension fund. If my salary were $150 a month, I would get $148.50—a dollar and a half deducted for the pension fund. Mr. Burns was paid back in full the $150. They added the one dollar and a half to it for the privilege of having my services. I suppose that there were fifty or seventy-five men working the same way I was, and when the Mayor issued an order that all men working that way were to report back for duty, I resigned.

Mr. Kresel: Is that all, Mr. Grossman?

Mr Grossman: Yes. Now I have here the affidavit——

Mr. Kresel: Wait a minute. Permit me to ask this witness a few questions.

Mr. Grossman: Certainly if you wish.

Mr. Kresel: I wish a good deal.

Mr. Grossman: I hope I shall have the same opportunity concerning Mr. A. Leo Weil.

Mr. Kresel (continuing):

Q. Is your real name Biddinger?

A. Yes sir.

Q. Isn't it Bentley?

A. No sir.

Q. Where were you born?

A. In Cincinnati, Ohio. I used the name of Bentley in some of my detective work.

Q. Weren't you born in Charlottesville, Virginia?

276 A. No sir.

Q. Is your mother living?

A. Yes sir.

Q. Where is she living?

A. In Bridgeport, Conn., right now.
Q. Have you ever been convicted of crime?
A. I never even was arrested in my life until Mr. Weil had me arrested.
Mr. Grossman: In this case?
The Witness: In this case.

Mr. Kresel (continuing):

Q. When did you go on the police force?
A. I think it was the 21st day of January 1903.
Q. And did you work continuously with the Police Department until 1911?
A. Until 1914.
Q. You mean you were a member of the Police force until 1914?
A. Yes sir.
Q. Is that what you mean?
A. Yes sir.
Q. During the month of March 1911 did you work as a policeman in Chicago?
A. Yes sir.
Q. The entire month?
A. Yes sir.
Q. Did you work the entire month of April 1911?
A. I left Chicago on April 10th and went to Toledo Ohio on the same train with McMonigle.
Q. Don't let us go into those particulars. You say you left Chicago in April 1911?
A. Yes sir.
Q. And went outside the State?
A. Yes sir.
Q. All right. And did you get a furlough in April 1911?
277 A. No. I was ordered by my superior officer——
Q. That is all right. And you stayed away how many months?
A. I stayed away just exactly one month.
Q. One month?
A. Yes sir.
Q. And came back in May 1911?
A. I arrived in Chicago the 10th day of May 1911.
Q. Where were you living then?
A. 2055 Byron Street, with my wife.
Q. How long did you stay in Chicago, beginning with the 10th day of May 1911?
A. Until the 31st day of July.
Q. The 31st day of July?
A. The 31st day of July.
Q. And did you work as a member of the Police force?
A. I did.
Q. From the 10th day of May 1911 throughout the entire month of May, and the entire month of June, and until the 31st of July 1911?

A. With the exception of my fifteen days' furlough, which I was entitled to.

Q. And when did you take that?

A. Some time in July, I took eight days.

Q. July 1911?

A. Yes sir.

Q. Very well. Now the 1st of August 1911, were you working as a Policeman in Chicago?

A. My furlough started—I left for Los Angeles, California, on the 1st day of August 1911.

Q. And how long did you stay away? You can refresh your recollection with anything you want to.

A. I arrived in Chicago Tuesday September 5th.

Q. So from the 1st of August 1911 until the 5th of Sep-
278 tember 1911, you were away from Chicago?

A. Yes sir.

Q. And outside of the State of Illinois?

A. Yes sir.

Q. Now how long did you stay in Chicago, beginning with the 5th of September 1911?

A. My book shows—that on the——

Q. Not what your book shows. How long did you stay in Chicago?

A. That is what—until the 20th of September.

Q. 1911?

A. Yes sir.

Q. And during those fifteen days did you do your duty as a policeman in Chicago?

A. Yes sir.

Q. All right. Now did you go away on the 20th of September 1911?

A. I took this man Diekelman to Kansas City——

Q. All right; and how long did you stay away, beginning with the 20th of September 1911?

A. I left on the night of the 25th of September from Kansas City to Chicago, and got in on Tuesday September 26th.

Q. During the month of August, and until the 5th of September 1911, when you were away from Chicago, did you do police duty during that time?

A. I did detective duty for the District Attorney at Los Angeles, California.

Q. All right. You arrived back in Chicago then on the 26th of September?

A. Yes sir.

279 Q. Did you resume your duties as a Police Officer then?

A. Yes sir.

Q. And how long did you continue to perform them?

A. I left September 30th for Indianapolis.

Q. And how long did you stay away, beginning with September 30th?

A. I left Cleveland, Ohio, October 17th for Chicago.

Q. In other words, between the 30th of September and the 17th of October you were outside of the limits of Illinois, were you?

Mr. Grossman: Wait a minute, Mr. Kresel.

Mr. Kresel: Please, Mr. Grossman——

Mr. Grossman: But, my dear Mr. Kresel, it is quite possible that this man might make a mistake. What was that last date, when you arrived in Chicago?

Mr. Kresel: He said September 26th, he arrived in Chicago.

Mr. Grossman: That is right. Look at the next date when you got back to Chicago—October 16th.

Mr. Kresel (continuing):

Q. October 16th, 1911?

A. Yes sir.

Q. And did you then resume your duties as a Police officer in Chicago?

A. Yes sir.

Q. How long did you continue to perform them?

A. My diary shows that I left on October 18th.

280 Q. Yes, and where did you go then?

A. To Cleveland, Ohio.

Q. And how long did you stay away outside of the limits of Illinois? Let him refresh his memory or recollection from anything he wants.

A. I was in Chicago October 12th——

Q. I think you said the 16th you got back.

A. I was there too from the 12th to the 17th.

Q. You were there from the 12th to the 17th. And then you left for Toledo, is that it?

A. No, for Cleveland.

Q. How long, now, did you stay there?

A. My diary shows that I came back to Chicago again on November 15th.

Q. All right. During the time you were in Cleveland, were you performing Police services for the Police Department of Chicago—yes or no?

A. It was in connection with the McNamara dynamiting case.

Q. Then you were working for Mr. Burns?

A. I was assisting in gathering evidence for the United States government, too.

Q. All right. Not for the Police Department of Chicago?

A. They were interested in it.

Q. Now, you got back then in November, what date?

A. November 1st.

Q. 1911?

A. Yes sir.

281 Q. You came back to Chicago?

A. Yes sir.

Q. Well, did you take up your duties again as a policeman?

A. I did.

Q. And how long did you perform them?
A. On November 4th I arrived at Indianapolis.
Q. You were then in Chicago three days. And how long did you stay away from Illinois, beginning the 4th of November, 1911?
A. I left for Cincinnati on Sunday the 5th, and arrived in Chicago on November 7th, 1911.
Q. Well, did you get to Chicago on November 7th?
A. Yes sir.
Q. All right. And how long did you stay in Chicago, beginning November 7th?
A. I stayed there the 7th and 8th and left the night of Wednesday the 8th for Pittsburg.
Q. All right. Now on the 7th and 8th of November 1911 did you do any police duty as a member of the police force in Chicago?
A. Yes sir. I did. I had——
Q. That is all. You have answered that question. Now on the 8th you went to Pittsburg?
A. Yes sir.
Q. How lon*d* did you stay away from Illinois, beginning with the 8th of November?
A. I think I arrived back—I am not positive about that date—November 13th.
Q. 1911?
A. Yes sir.
Q. How long did you stay in Chicago then, beginning November 13th 1911?
282 A. I left the 23rd for French Lick, Indiana, with this man Accord (?).
Q. You left on what date—pardon me?
A. The 23rd of November.
Q. 1911? Is that right?
A. Yes sir.
Q. And where did you go?
A. To French Lick, Indiana.
Q. And how long, beginning with the 23rd of November 1911 did you stay outside of Illinois?
A. My book shows that I left Chicago again the 14th of December for Indianapolis.
Q. The 14th of December 1911?
A. Yes sir. I was in Chicago that day, and left for Indianapolis.
Q. That is, you were in Chicago one day?
A. I can't tell how long I was there. I will have to get the books from the Burns Agency to show that. My book shows railroad fare from Chicago to Indianapolis.
Q. And then where did you go?
A. The next date shows that I was in Chicago December 21st.
Q. 1911?
A. And left on the 11:55 train that night for Indianapolis again.
Q. And you stayed away from Illinois then, beginning with December 21st 1911, isn't that right?
A. I left there on the 21st at 11:55 for Indianapolis.

Q. All right. Now did you have a furlough from the Police Department during the months of August, September, October, November and December 1911?

Mr. Grossman: I object to that. I now call for the production
283 of all of the furloughs and applications in writing under the rules of the Police Department made by Mr. Biddinger upon which these furloughs are based and were issued. They are here and I call for their production, and for the production of the other books of the Police Department.

Mr. Kresel: I have a right to ask him——

The Governor: I suppose you have got the right to ask him a question.

Mr. Grossman: I have no objection to his asking him a question, but I call for the production of the original applications.

Mr. Kresel: I will gladly produce them.

The Governor: He says he will produce them. Did you Mr. Biddinger, have a furlough?

The Witness: I got a furlough for four months, starting the first day of August, and lasting until the first day of December.

Mr. Kresel (continuing):

Q. 1911?

A. Yes sir.

Q. All right. Now do you mean to say that during the time, or date, in between dates that you had been due in Chicago, between August and the end of December 1911, you reported for Police duty, and actually performed police services, although you were on
284 a furlough? Do you mean to say that?

A. I will make it as clear as I can to you, Mr. Kresel. At the expiration of my furlough I had to report back to the General Superintendent of Police.

Q. I am not talking about the expiration of your furlough. I am talking about the months of August, September, October, November and December.

A. December 1st I reported back.

Q. Very well, then, between the first of August and the first of December you did not report to your Department, and did not perform any Police duties, did you.

A. I performed detective work.

Q. Did you perform any duty for your Department, the Police Department of Chicago?

A. This was duty for the Department of Chicago.

Q. Now, did you report to your Department; did you go there?

A. Yes. I was in and out of there every time I got to Chicago.

Q. Did you report for duty?

A. No.

Q. All right. Now, I show you your furlough which Mr. Grossman is so anxious to have (showing to witness). Is this it?

Mr. Grossman: The first one is it.

Mr. Kresel: Yes sir (handing to witness). Is it, Mr. Biddinger?
A. Yes sir.
Q. Is that your signature to that instrument—Guy Biddinger?
A. Yes sir.
285 Q. And I also show you a paper headed "Leave of Absence" (showing to witness). Is the signature to that your signature?
A. Yes sir.
Q. That is the application also for this furlough, isn't it?
A. Yes sir.
Q. Leave of absence for four months?
A. Yes sir.
Q. All right. May I have this marked?

The Governor: I understand you want them returned.
Mr. Kresel: Yes. They will have to be returned, because they are original records.
Paper received and Marked Exhibit 1.

Q. Now on the first of December 1911 you said you came back to Chicago and applied for an additional furlough?
A. Yes sir.
Q. And you did obtain a year's furlough?
A. Yes sir.
Q. Did you not?
A. Yes sir.
Q. Now, during that year, that is, beginning the 1st of December 1911 and ending December 1st 1912, did you report and perform any services for the Police Department of Chicago?
A. Well, I say, my work was in connection with McNamara case.
Q. You were working for Mr. Burns during that time?
A. No. The District Attorney of Los Angeles was our client in the matter.
286 Q. That is, Mr. Burns' client?
A. Yes sir.
Q. All right. And now we may as well clear up this question about pay. The fact is that beginning with the 1st of August 1911, when you started getting these furloughs, such payments as were made to you by the Police Department of Chicago, were repaid by Mr. Burns to the Department in Chicago, weren't they?
A. Yes sir.
Q. In other words, a check would be made out to you for your salary?
A. Yes sir.
Q. And would be forwarded to your office in New York, or to the Burns office in New York?
A. No sir.
Q. Well, where would it be forwarded?
A. To Chicago at my home office.
Q. Your home office?
A. Yes sir.

Q. What do you mean by home office; did you maintain an office in Chicago?
A. I was assigned out of the Chicago office, my home.
Q. You mean the Burns office?
A. Yes.
Q. They were sent to you, any way?
A. Yes sir.
Q. And then the Department of Chicago made out a bill to Mr. Burns for the same amount that your salary was?
A. Plus the pension.
Q. Plus the pension; and Mr. Burns repaid that to the Department, isn't that right?
A. Yes sir.

287 Q. Now, did you, were you paid by the Police Department during the entire time that you were working for Mr. Burns, beginning with the first of August 1911?

A. Some of the checks I drew and signed myself.
Q. You do not understand my question. My question is, whether the Police Department made out checks to you as pay every month during the time you were working for Mr. Burns?
A. That I do not know.
Q. No. Isn't it a fact that such payments were made out to you only for a very few months?
A. That I am not positive about.
Q. And that during the greater part of the time that you were assigned to work with Mr. Burns, no checks were paid to you by the Police Department, but that you got your pay direct from Mr. Burns?
A. I drew my pay from Mr. Burns; some times when I happened to be in Chicago a check would come——
Q. Very well, Now listen. Beginning with the first of December 1911, then, you had a year's leave of absence?
A. Yes sir.
Q. All right. You were at no time in Chicago during the month of January 1912? I want to amend that question by making it, instead of Chicago, the State of Illinois? At no time from the first of January 1912 to the 31st of December 1913, were you within the borders of Illinois?

288 Mr. Marshall: From the first of January 1912 to the 1st of January 1913.

Mr. Kresel: I said the 31st of December. That is the same thing.
The Witness: Yes sir.
Mr. Kresel: There is a little mix up about that.
The Witness: I understand.

Mr. Kresel (continuing):

Q. That is, during the year 1912, you say you were in Chicago?
A. Yes sir.
Q. Tell the Governor when you were in Chicago that year?

A. I called at the Chief of Police Department to get my street car book renewed. (Indistinct.)

Q. August 21st, 1912. All right. And where did you—I withdraw that portion of the question. Did you stop at any hotel in Chicago on August 21st 1912.

A. I stopped at my mother's home.

Q. Where was that?

A. No. 12 West Ohio Street.

Q. In Chicago?

A. Yes sir.

Q. Now, were you in the State of Illinois on any other date during the year 1912, in addition to August 21st?

A. Yes sir.

Q. What other days? Do we understand you correctly, Mr. Biddinger, that you were in Chicago on that one day, August 21?

A. No sir.

Q. Tell us all the days, then, in 1912, besides August 21st?

289 A. I was in Chicago on Sunday the 14th day of January.

Q. What year?

A. 1912. On the 14th and 15th. I went home to spend a birthday with my mother, the 15th *od* January 1912.

Q. Yes; now what other days?

A. It shows that I left Chicago on January 23rd for Indianapolis.

Q. Well, that means you were in Chicago on January 23rd, 1912, does it?

A. That is what my book shows.

Q. By the way! You speak about your book showing. Is there any question but that that book is a correct record?

A. Well, you can get——

Q. Not what I could get. I am asking you a question. Do you now testify that the dates you are reading from your book are correct dates when you were present in Chicago?

A. Yes sir.

Q. All right. Now go ahead. When were the entries in these books made by you?

A. Every night, before I retire I fix up my expense account.

Q. All right. Do these books—may I see one of these memorandums?

A. Sure. (Indistinct explanation of memos. by Mr. Biddinger to Mr. Kresel.)

Q. Do you say you were in Chicago on February 2nd 1912?

A. Yes sir.

Q. Do you get that information from your book?

A. Yes sir.

290 Q. Just read the entry that gives you that information?

A. "Left for Cincinnati at 11:55 P. M."

Q. Left where?

A. It doesn't say where.

Q. How do you know it is "left Chicago"?

A. On account of the railroad fare, and the Pullman, etc.

Q. How does that prove it? Tell me what the railroad fare and the Pullman shows?

A. "Railroad fare $6.00 Pullman $2.00".

Q. Six dollars. You could go for six dollars from more than one point, to another.

A. Well, I can easily get the records from the Burns Agency.

Q. No, I want you to tell it. Never mind about getting it from the Burns Agency?

A. I am telling you to the best of my ability.

Q. You want to be frank with the Governor?

A. I am frank. I am telling it to the best of my knowledge.

Q. Have you told us all the days during 1912 that you were within the boundaries of Illinois?

A. No sir.

Q. Let me put this question to you. You heard Mr. Grossman say to the Governor here that you worked for the Police Department during the months of September, October, November and December 1912, and January and February 1913; is that correct?

A. Well, I was doing work in the way of looking for bank burglars, and check forgers, etc.

291 Q. Now, you are bright enough to know what I am asking. Don't try to get around it. What I want to know is, were you actually doing Police duty for the Chicago Police Department during the months I have mentioned?

A. No sir.

Q. All right. Then Mr. Grossman was wrong about that. Now I show you these two papers, and ask you whether they are the applications for your year's furlough, beginning with December 1st 1911; and are the signatures "Guy Biddinger" there, your signatures? (showing papers to Witness.) Is there any question about that, Mr. Biddinger?

A. (Examining papers.) It doesn't look like my signature. It may be. I am sure about it.

Q. Which doesn't look like your signature?

A. It is my signature.

Q. It is your signature. Then your signature is on both of these documents?

A. Yes sir.

Q. All right; and they are your applications for a furlough?

A. Yes sir.

Mr. Kresel: I want to offer these two in evidence. Documents received in evidence and marked Exhibit 2.

Q. I want to ask this question. Mr. Biddinger, did you do any, did you perform any duties for the Police Department of Chicago beginning with the 1st of August 1911, and down to the date

292 when you sent in your resignation?

A. Yes sir.

Q. You understand the question?

A. Yes sir.

Q. As Detective Sergeant?
A. Yes sir.
Q. Is this your resignation that you sent? Your signature is there, isn't it; is that your signature?
A. Yes sir.
Q. All right.

Mr. Grossman: May I read it?
Mr. Kresel: No, not until I offer it in evidence.

Q. That is your signature, isn't it?
A. Yes sir.

Mr. Kresel: All right. Now I offer that in evidence. Now you may read it. He will read it. Let him read it first. May I read this, with your Excellency's permission?

"New York, January 25, 1911.

Mr. James Gleason, General Superintendent, Police Department, Chicago, Ill.

DEAR SIR: I herewith tender you my resignation to take effect immediately. In view of the fact that I have not been actively engaged in any police work for the City of Chicago for the past four years, and am probably keeping some good man out of the
293 promotion, I therefore think it best that I should resign, and trust you will accept this resignation immediately upon receipt of the same.
Thanking you for many past favors received at your hands, I am,
Very truly yours,

GUY BIDDINGER."

Q. Is that true, that you had not been doing any police work for the City of Chicago, for the past four years?

Mr. Grossman: Objected to as being in contradiction of this document.
The Governor: You prefer to let that stand?
Mr. Grossman: He says, "actively engaged."
Mr. Kresel: May that be marked.
Mr. Grossman: I consent to have that marked in evidence.
Document received in evidence and marked Exhibit 3.

Mr. Kresel (continuing):

Q. Now, after the first of December 1913, did you get another furlough?
A. Yes sir.
Q. For how long?
A. I think it was one year; I am not positive.
Q. Did you get it on the first of December 1913?
A. I am not sure about that.

294 Q. You are not sure. Did you, were you in the City of Chicago or in the State of Illinois on the first of December 1913?

A. Yes sir.

Q. What date?

A. On Sunday December 1st I left Indianapolis for French Lick with Mr. Burns.

Q. Were you in Illinois on the first of December 1913?

A. Yes sir.

Q. All right. And did you make the application for your leave of absence then?

A. I do not remember.

Q. You do not remember. Now look at this paper, or these two papers rather; are those applications—did you have a leave of absence for one year beginning with August 24th 1912; and are the signatures there your signatures? (handing papers to witness)?

A. Yes sir.

The Governor: Mr. Kresel, have you some others there? Are you going to put them all in?

Mr. Kresel: If Your Honor wants more. I offer these in evidence.

Mr. Grossman: Consented to.

Documents received in evidence and marked Exhibit 4.

Mr. Kresel (continuing):

Q. Have you got your diary here for 1910?

A. No sir.

Q. 1909?

A. No sir.

Q. 1908?

A. No sir.

295 Q. Were you in the City of Chicago on the 15th of November 1908?

A. I can't tell.

Q. Will you swear that you were not?

A. I won't swear that I was or that I was not.

Q. Were you in the City of Chicago on the first of August 1909?

A. I do not know whether I was or was not.

Q. Do you know it to be the fact that you were in the City of Chicago on the first of August 1909?

A. I generally take my vacation—I do not know whether I was or not. You have the records there that will show.

Q. Did you get a furlough in 1909, do you remember?

A. My fifteen days allowed me by law.

Q. Yes. Is that the application for it? (handing document to witness)?

A. Yes sir.

Q. And that is dated in Chicago August 2nd 1909, isn't it?

A. Yes sir.

Q. Have you any doubt now but that you were in Chicago on the first of August 1909?

A. I couldn't tell whether I was or not.

Q. You are unwilling to say, are you, that you being a Policeman on the Police force of Chicago, and the fact being that on the second of August you were in Chicago and made this application for your leave of absence, you are unwilling to swear that the day before you were in Chicago; is that it?

A. Yes sir.

296 Q. Have you any recollection of being anywhere else but in Chicago on the first of August 1909?

A. No, I have not.

Q. Where did you live in August 1909?

A. With my mother, at No. 12 West Ohio Street.

Q. Were you married then?

A. No sir.

Mr. Kresel: I offer that in evidence.

Mr. Grossman: Consented to.

Document received in evidence and marked Exhibit 5.

Mr. Kresel (continuing):

Q. And now, lastly, I show you these two papers and ask you whether those are the applications for another year's leave of absence, dated February 1st 1913; and are the signatures there your signatures?

A. Yes sir.

Mr. Kresel: Now, I offer these in evidence.

Mr. Grossman: Consented to.

Documents received in evidence and marked Exhibit 6.

Mr. Kresel (continuing):

Q. Now in the month of October 1913 you were not doing any police duty for the City of Chicago, were you?

The Governor: I think you have got that already.

A. No sir.

Q. Were you, Mr. Biddinger?

A. No sir.

297 Q. You were promoted to Detective Sergeant that month, weren't you?

A. Yes sir.

Q. Was I correct in stating——

A. November I think it was.

Q. Very well. Was I correct in stating to the Governor that that promotion was what is known as an automatic promotion by statute of the State?

A. No sir, you were not.

Q. I was not. Then will you please tell us the truth?

A. The General Superintendent of Police has the same ruling that they have here, that you can take one out of every three for promotion, and that you can reject two out of every five.

Q. That doesn't answer the question?

A. You said, was I automatically promoted. The Chief of Police could refuse to certify me for promotion if he wanted to.

Q. Is it a fact that you were among a lot of other men holding the same grade, and you say that — were so promoted pursuant to a statute passed by the Legislature?

A. No sir. The City passed an ordinance making a new grade, and First Grade Detective Sergeant, and increasing the pay, and abolishing the rank of Inspectors, and reducing the Inspectors.

Q. In other words, it was a local ordinance, instead of a
298 legislative provision?

A. Yes sir.

Q. I see. Quite a number were promoted at that time, is it a fact?

A. Yes sir. But the Chief of Police had the power to refuse to certify me for promotion if he wanted to.

Q. Very well. Now, you have been in New York for some time, haven't you?

A. Yes sir, I have.

Q. When did you first come to New York; I mean subsequent to the first of May 1911; now I do not want the exact date. I want to take as little time as possible?

A. I was a bell boy at the old Victoria Hotel in 1892.

Q. I am talking about subsequent to 1911. I purposely restricted it to that time?

A. Subsequent to 1911. I will have to look back at my book.

Q. Let me ask you the general question. You are now living at the Holland House, in New York City?

A. Yes sir.

Q. How long have you been living there?

A. Since, I think it was last October.

Q. Last October?

A. Yes sir.

Q. Well, prior to that where were you living?

A. At the New York Athletic Club.

Q. In New York City?

A. Yes sir.

Q. And for how long had you been living at the New York Athletic Club?

A. From February until Octol er.

Q. Of what year?

299 A. February 1914 to October. I was there eight or nine months previous. I do not remember exactly how long. Previous to going to the Holland House I was at the New York Athletic Club.

Q. For about how many months did you say?

A. I think I went there——

Q. Didn't you go there in February 1914?

A. I think you are right.

Q. And you stayed there until October 1915?

A. Yes sir.

Q. Now prior to living at the New York Athletic Club, where were you living?

A. Chicago, Illinois.

Q. You mean that in the month of January 1914 you were living in Chicago, Illinois? Don't let us quibble about the legal meaning of living. You know what I mean. You know what I am trying to get ?

A. I am trying to recall about where I was in January. If you will let me turn to my book I will try to refresh my memory.

Q. All right. You said you lived in Chicago?

A. My diary shows I was in New York on January 1st 1914.

Q. Now what I want to know is, where were you living; which was the place where you hung up your hat and coat prior to living at the New York Athletic Club?

A. At No. 12 West Ohio street, in Chicago.

Q. You lived there during the month of January 1914?

A. Yes sir.

Q. Were you there on the 31st of January 1914?

300 A. No, I was in New York City on January 31st 1914.

Q. Were you in Chicago any time during January 1914?

A. No sir.

Q. Now you see, you are quibbling?

A. I am not.

Q. What I want to know is, when you were in New York during January 1914, where you were living?

A. I was in Canada.

Q. All right. When you were in Canada where were you living?

A. When I was in New York during January, I stopped at the Breslin Hotel in January 1914.

Q. All right. Now let me ask you. Didn't you stop at the Breslin Hotel during the months of November, December 1913, and January, February, March, April and May 1914?

A. Why, I was in Canada, as I say, about two months during that time, but I maintained a room to keep my clothes in——

Q. At the Breslin?

A. At the Breslin.

Q. During those months?

A. I wouldn't say all of that time.

Q. All right. Now was that the first time you maintained the room at the Hotel Breslin? Didn't you maintain a room at the Hotel Breslin during the entire year of 1913, and paid for it?

A. I do not know whether I did or not.

Q. You don't know whether you did or not. Now what do you mean, or what did you mean when you said a little while ago that you lived in Chicago?

301 A. I intended, if ever I had a disagreement with Mr. Burns, to resume my position with the Police Department in Chicago, and I therefore kept my residence there.

Q. Would you intend—you intended to return to Chicago?

A. Yes sir.

Q. But, as a matter of fact, you never did go there to live?
A. I always maintained my residence there with my mother until the 21st day of August 1914.
Q. What you mean by maintaining a residence, is that you intended that to be your residence?
A. No. There was no intended at all about it. I kept that as my home.
Q. But you never had everything in Chicago, Illinois?
A. Yes sir.
Q. And that had been your intention from the very moment in May 1911 that you left Chicago, is that right?
A. Yes sir.
The Governor: Did you vote, Mr. Biddinger?
The Witness: No sir, I was not in Chicago, Your Excellency, but in New York. When my father died in 1914, I brought my mother on to New York.
The Governor: When did you last vote in Illinois; do you remember.
The Witness: I do not remember. I wouldn't want to hold myself down to that.
The Governor: Did you vote there after the first of May 1911?
302 The Witness: That I couldn't say. I tried to keep out of politics there. I always aimed to be out of the City on Election day.

Mr. Kresel (continuing):

Q. And so you maintained your residence in Chicago did you?
A. Yes sir.
Q. At what street number?
A. No. 12 West Ohio Street.
Q. Was that your wife's abode, or your mother's abode?
A. My mother's abode.
Q. When were you divorced from your wife?
A. I think it was in November 1912.
Q. November 1912. She obtained the divorce?
A. Yes sir.
Q. You say you did not vote in Chicago?
A. I do not say. I do not know. But I am telling you that I always tried to be out of Chicago on Election day.
Q. Did you intend to live in Chicago after 1911?
A. Yes sir. No matter what side you voted for, the other side were on your back, and that is the reason I was always able to say that I did not vote.
Q. Look at this letter; is that your letter; your handwriting? (showing to witness.)
A. Yes sir.
Q. Let me have it please. That letter is dated January 13th 1912, from Detroit?
A. Yes sir.

303 Q. You were in Detroit when you wrote that?
A. Yes sir. Let me see this a minute, will you please? Yes sir.
Q. You were living in Detroit at that time?
A. No sir. I went out there.
Q. Were you living there?
A. No, sir.
Q. All right. Is this letter addressed to your wife?
A. Yes sir.
Q. I want to read to you just one portion of this letter. Follow me please. "But I think in all fairness to you that I ought to explain to you that I never intended to live in Chicago again, or with you, or any other woman, so you could make your plans, and do what you think was best."
A. Yes sir. I remember very distinctly writing that.
Q. Did you intend to live in Chicago again after leaving?
A. Yes sir. She was bothering the life out of me and my mother, and I wrote that to have her keep away from my mother.
Q. You were maintaining bachelor quarters in Detroit at that time, were you not?
A. No sir, I was not. I stopped at the Pontraine hotel.
Q. You wrote your wife that you were maintaining bachelor quarters, didn't you? Look at it.
A. Possibly I did. I do not remember. I may have done so.
Q. "You seem to be laboring under the impression that I
304 am living with a woman here. As a matter of fact I am living in a bachelor apartment, where they don't allow a woman in the place."
A. I was referring to the Cloister Bachelor Apartment where I was stopping when I went to Detroit to investigate the burning of the Penitentiary at Jackson, Michigan, at the time I wrote that letter.
The Governor: You mean with reference to bachelor apartments, that you were referring to your bachelor apartments in New York.
The Witness: Yes sir.
Mr. Kresel: In New York or Detroit?
The Witness: In New York. I was there only a day or two—just passing through on my way to Jackson, Michigan.

Mr. Grossman: I want to take up the redirect examination of——

Mr. Kresel: I want to direct your attention also to another portion of this letter: "In the second place, I am on the road twenty-five days out of thirty, as can be easily proven." Was that true.
A. Yes sir.

Mr. Grossman: When was this?
Mr. Kresel: This is dated January 13th, 1912.

Q. Now what particular position, if it was named in any way, did you have with Mr. Burns?
A. Detective.

305 Q. Just a Detective?

A. No I had the position of Assistant General Manager, which in effect was to put me above the local managers in the different cities where I would go to.

Q. All right. And where was your main office?

A. In Chicago.

Q. In Chicago?

A. Yes sir.

Q. Did you have a desk there?

A. Yes sir.

Q. Where?

A. In the Chicago Office.

Q. The Burns office?

A. Yes sir.

Q. Do they have a local representative there?

A. Yes sir.

Q. Who was he?

A. Mr. Burns' son.

Q. What is his name?

A. Raymond.

Mr. Kresel: That is all.

Mr. Grossman: Now, if your Excellency please, before I take up the redirect examination of Mr. Biddinger, I am apprehensive that perhaps tomorrow the officer from Chicago would possibly be away. (Indistinct.) If he is to be here, I won't trouble to call him now.

The Governor: What officer are you talking about?

Mr. Grossman: This officer that brought these papers. Is he going to be here tomorrow?

Mr. Kresel: I think we had better leave this to the Governor. I do not apprehend that we have got to stay over here until tomorrow.

I want to finish this tonight. I have got a very important
306 court engagement in New York tomorrow.

Mr. Grossman: Then I will suspend my examination of Mr. Biddinger at this time, and I will call the officer. If that is agreeable to Mr. Kresel.

Mr. Kresel: Certainly.

Witness duly sworn by the Governor.

Mr. — DOMKE, being duly sworn as a witness in this proceeding, testified as follows:

Direct examination.

By Mr. Grossman:

Q. What is your name?

A. Mr. Domke.

Q. Mr. Domke, what is your business?

A. I am a clerk in the office of the Secretary of Police, in charge of the records.

Q. Where, in the Secretary's office of the Police Department, where?

A. In Chicago, Illinois.

Q. You live there; are you an officer of the Department?

A. No sir, I am one of the—I am a Clerk, not an officer.

Q. Who asked you to come here?

Mr. Kresel: It seems to me that that is entirely immaterial.

The Governor: I should sustain that objection.

307 Mr. Grossman: You have got him here at somebody's instance, haven't you?

The Governor: Why, certainly they have.

Mr. Grossman: I want to know at whose instance.

The Witness: The General Superintendent of Police.

Mr. Grossman (continuing):

Q. Have you had any conversation with a man by the name of A. Leo Weil?

Mr. Kresel: I submit, if Your Honor please, that we should not go into the question of Mr. Weil's communication, or anybody else's connection with this matter.

Mr. Grossman: That is a very important issue.

Mr. Kresel: We might just as well fight it out right now, Mr. Grossman.

The Governor: He is here, and his books are in his custody.

Mr. Kresel: You have brought here certain records from Chicago, I think. Who brought them? Were they——

The Witness: I came alone.

Mr. Kresel: Isn't there another officer?

The Witness: No sir, not with me.

Mr. Kresel: Isn't Mr. Murphy here?

The Witness: He is the officer named in the Governor's requisition. He ought to be here.

308 Mr. Grossman (continuing):

Q. What books did you bring on from Chicago?

A. I brought the Time Roll books.

Q. Yes, what else?

A. Those were the only books.

Q. Did you bring the furloughs and applications for leave of absence which Mr. Kresel introduced in evidence here?

A. Yes, the slips. But they are not books.

Q. The Time Roll books, and furloughs?

A. Furlough blanks, and the resignation, and some cards that we have in the records showing from time to time the time that a man makes in the Department, as to his attendance, and furloughs, etc.

Mr. Grossman: I call for the time cards, if Mr. Kresel please.

Mr. Kresel: Yes sir.

Mr. Grossman: I also call for any other papers or documents.

Mr. Kresel: That is very broad. You may call for anything you want, and I will give it to you.

Q. Besides the furloughs and those time cards, did you bring any other papers outside of the books upon the floor?

A. I brought the original copy of a warrant or several warrants for collection which were made out in our office, billing the Burns Detective Agency for the services of one Sergeant.

309 Q. That is to say, do your books show how checks or vouchers for the Department, for the payment of Mr. Biddinger's services during 1911, 1912 and 1913, and 1914, were drawn?

A. Not for,—just for one year; just for a certain period.

Q. Just take one of these books and show me the entries concerning Mr. Biddinger, please, will you?

A. (Taking book.) What dates do you want?

Q. If you can, take August 1912, for example.

A. Let me have that time card for 1912. I will have to have that as a guide.

Mr. Kresel: What is the question?

Mr. Grossman: What does that mean.

Mr. Kresel: Let us get the record straight. The witness indicates an entry on the sheet for a period ending August 31st, 1912. Department of Police, City of Chicago. The entry reads, No. 13. Biddinger, Guy. No. 2055 Byron Street. Star number 201. And then under each date during the month of July and August 1912 there is an "F."

Mr. Grossman (continuing):

Q. What is that?

A. Whatever that question is, I would like to explain the rules of the Police Department starting at the first of the month,

310 and not at the period ending August 31st. And they are called for on the 20th of the month. They therefore assume time from the 20th to the 31st, and in the event that a man has been absent for any time between the 20th and the last day of the month, that would not show on the current month, but would show on the subsequent month. Therefore we have him from the 19th to the 31st of July on our August roll, and from the first of August to the 20th of August on the August roll. And it shows that he was there on a furlough from the 20th day of July to the 19th day of August, and that he worked one day in the month—he worked, let us see, 12 days assuming that he was present eleven days from time to time—it only shows he was presene one—assuming he was present or there eleven from time to time, and he was on a furlough nineteen days, and was present twelve days.

Q. In other words, of the thirty-one days from July 20th to August 20th, 1912, he was at work for twelve days?

A. No sir. He was at work for one day between this period from the 20th of July to the 20th of August; he was only present one day.

Q. One day?

A. And was on a furlough during the other time.

Q. Yes.
A. But from the period commencing with the 21st, to the 31st, he was present eleven days. But that time was assumed,
311 owing to the fact that the rolls were called on the 20th of the month.

Mr. Kresel: Pardon me just a moment. I want to get it straight. And does your card show that he was on the furlough during the entire month of August 1912? The card shows that. I have that furlough, 2503.

Mr. Grossman: Yes, he took his furlough August 21st, 1912.

The Witness: It shows that he took his furlough commencing with August 26th, 1912, at eight o'clock A. M.

Mr. Grossman (continuing):

Q. August 21st, 1912; that is the year?
A. No, sir, that is the length of the furlough. Twelve months, and that is the reference numbers for our files.
Q. I see. Now can you tell me whether between the 19th and 31st of August he did any work for the Department?
A. From the 19th to the 31st of August?
Q. Yes?

Mr. Kresel: I want to direct your attention to the fact that Mr. Biddinger testifies that he did not work during those months in 1912. What is the use of wasting time on that?

Mr. Grossman: I haven't got to Mr. Biddinger's redirect examination yet.

Q. Now turn to the following month and tell me what you
312 find from your record.
A. The time roll which I have before me is for September 1912, for the period ending the 30th of September, and takes in the time from the 21st day of August up to and including the 30th day of September, and assumes time from the 20th of September to the 30th of September. Or, in that period between August 21st, 1912 and September 20th, 1912, it shows him present; but he was not present, which is shown by this furlough. He was constructively present, but he was working for the Burns Detective Agency during this period.

The Governor: It seems to me, Mr. Grossman, that that is clear.

Mr. Grossman (continuing):

Q. Now was he paid by the Department during all of the time he was having these furloughs?
A. Yes sir. I can explain that.

The Governor: Mr. Biddinger has explained it himself.

Mr. Kresel: Yes, Mr. Biddinger has explained that.

The Witness: I can explain that by the warrants that are made out in our office.

Mr. Grossman (continuing):

Q. Will you explain, as a matter of record, and I will introduce those warrants in evidence. I will ask you one or two other
313 questions. Mr. Biddinger was paid as a Detective Sergeant of Police, as a member of the Police Department, up to the time of his resignation in February 1914, was he?

A. I did not get that question.

Q. Now, wasn't he?

A. I do not just understand your question.

Q. I mean to say that Mr. Biddinger was a member of the Police Department, and a Detective Sergeant until February 1914, wasn't he?

A. He was a member of the Department, inasmuch as——

Q. Was he, or wasn't he?

A. He was on a furlough.

Q. Was he a member of the Department, or not?

Mr. Kresel: I will admit that he was a member of the Department.

The Witness: Up until he resigned.

Mr. Grossman (continuing):

Q. Now as a member of the Department, absent on a furlough, he was paid by the Department, wasn't he?

A. Yes sir.

Q. And checks and vouchers were drawn every month and given to this gentleman?

A. No, not every month.

Q. Almost every month?

A. No.

Mr. Kresel: That is just it; that vouchers were drawn to Mr. Biddinger's order in 1911 when he got his first furlough.

314 Mr. Grossman: He got no pay?

Mr. Kresel: Let him answer.

Mr. Grossman: I don't want his conclusions. I want to know whether vouchers were drawn to Mr. Biddinger's order during 1911 as a member of the Department.

The Witness: Up to August 1911 he received pay from the City, and after August 1911 he did not receive any pay from the City of Chicago.

Mr. Grossman (continuing):

Q. Until when?

A. Until August 1912, and that is the payroll that we just had before us.

Q. In August 1912 did he get pay from the Department?

A. He got a check from the City of Chicago.

Q. He did?

A. Yes, sir.

Q. And continued to get checks after that, didn't he?
A. Yes, for three or five months, or six months.
Q. For that?
A. For that.
Q. And then what happened?
A. He was on a furlough all the while, and still got pay from the City of Chicago.
Q. That is the answer. Now did he continue to get checks from the City of Chicago while he was on furlough?
A. The last check or warrant he got from the City of Chicago was in February 1913.

315 Q. That was the last check he got?
A. Yes sir.

Q. And he resigned in February 1914?
A. Yes sir.
Q. Now the City of Chicago rendered a bill to Mr. Burns?
A. Yes sir.
Q. For the time, for part of the time, given to Burns by the City of Chicago of Mr. Biddinger's services?
A. I did not get that question. Make it a little shorter.
Q. The City of Chicago rendered a bill to the Burns Detective Agency for the services of Guy Biddinger, a Sergeant?
A. Yes sir.
Q. Of Police?
A. Yes sir.
Q. Are these the bills or warrants issued by the Police Department of Chicago? (Showing to witness.)
A. Yes sir, they are; made out in our office.
Q. Was Mr. Biddinger during all of this time, and up to February 1914, under the direction and subject to the control and the regulation of the General Superintendent of Police of Chicago?
A. A man on an extended furlough is subject to be called by the Chief at any time.
Q. At any time?
A. A furlough is revocable at any time in his discretion.
Q. At any time. Now——

Mr. Marshall: But it was not revoked.

Mr. Grossman (continuing):

Q. It was not revoked, but he was called back?
A. I couldn't say as to that.

316 The Governor (indistinct): You are wasting your own time. It is entirely clear, and has been.

Mr. Grossman: All right, if Your Excellency takes that view of it. May I offer in evidence this?
The Governor: There is no objection, I take it.
Mr. Kresel: No.

Mr. Grossman (continuing):

Q. Must a Police Officer be a resident of the City of Chicago in order to maintain his position as an officer?

Mr. Kresel: One minute.

The Witness: I am in no position to answer that. I am no authority on the law. I am no lawyer.

Mr. Grossman (continuing):

Q. Let me show you this, and ask you if this is a copy of the rules and regulations of the Department of Police of the City of Chicago?
A. I can testify that that is a copy of the Rule Book in vogue in the Police Department in the City of Chicago at present.
Q. What is that?
A. ——.

Mr. Kresel: Yes, he says it is a copy, at present.

Mr. Grossman: My friend suggests that in this month of October 1911, you have not guessed at what probably occurred, if he penned this in September?

The Witness: No. In order to get the last guessing, the last
317 days of September, you will have to go to the office for them.

The Governor: I think your client has testified himself as to that.

Mr. Grossman: Now that is all. Now I offer in evidence this book which has been identified by Mr. Biddinger——

Mr. Kresel: I do not know that he has given any testimony with reference to it.

Mr. Grossman: Mr. Biddinger, I show you a book and ask you to tell us what it is.

Mr. Biddinger: I showed this to the Governor.

Mr. Grossman: Tell us again.

Mr. Biddinger: When I reported back for duty I went to the Chief of Police of the Force, and got my old book renewed for this, on the 21st of August 1912.

Mr. Grossman (continuing):

Q. And that is only issued to members of the Police Department of the City of Chicago?
A. A certain number.

Mr. Grossman: I offer that in evidence.
Book received and marked Exhibit 9.

Mr. Grossman (continuing):

Q. Mr. Biddinger, were you usually and publicly a resident in the City of Chicago until February——

Mr. Kresel: One minute. Do not answer that question.
318 I object to that. That is the thing that Your Honor has got to decide, and not the witness. That is calling for a conclusion.

The Governor: Well, I will allow him to answer. You have asked him if he lived there. This is just the same kind of a question.

Mr. Grossman (continuing):

Q. Until what time were you usually and publicly a resident of the City of Chicago?
A. Until the 21st day of August 1914.
Q. And what occurred then?
A. I moved my mother to New York.
Q. From Chicago?
A. Yes sir.
The Governor: Did you pay the rent for your mother's apartment or house in Chicago?
The Witness: Yes sir. And I sent her a hundred dollars every month to live on. I was the support of my mother.

Mr. Grossman (continuing):

Q. From April 11th, 1911, when Chief Woods assigned you to this dynamiting case that took you to California, from that time until the end of 1914, did you often go to Chicago?
A. Yes sir.
Q. And every year?
319 A. Sometimes eight or ten times a year.
Q. When you went there, did you stay there for some time?
A. Yes sir. A day, two days, or a week at a time.
Q. Did you make any arrests from April 11th 1911 until the fall of 1914?
A. Yes sir.
Q. In Chicago?
A. Yes sir.
Q. In Illinois?
A. Yes sir.
Q. Tell his Excellency some of the arrests that you made.

The Governor: Oh no, I have no doubt that is so.
Mr. Grossman: All right, Sir; just as you wish. (Continuing:)

Q. Now, Mr. Kresel showed you a letter. May I see that letter from—your ex-wife? He showed you a letter which you wrote to your ex-wife in January 1912, in which you said something about not coming back?
A. Yes sir.
Q. No, something about your intention not to live with her?
A. Yes sir.
Q. In Chicago. What were the circumstances under which that letter was written?

The Governor: I think he has stated that.
Mr. Grossman: Very well, if you are satisfied about it I shall not press it. (Continuing:)

320 Q. As a matter of fact you did intend to continue to—Is he to be pinned down by a statement written to his wife?

The Governor: I will allow the question.

Mr. Grossman (continuing):

Q. As a matter of fact was it your intention to continue at that time to be a resident of the City of Chicago, and the State of Illinois, or not?

A. Yes sir.

Q. It was?

A. Yes sir.

Q. And did you so continue?

A. Yes sir.

Q. And so considered yourself?

A. Yes sir.

Q. Now upon the application for your extradition, there is an affidavit of your ex-brother in law, Hill. Did you see it?

A. Yes sir.

Q. Hill says that you left Chicago, and have not been in Chicago since May 1911. That is not true, is it?

A. He came to my house to see this fellow. He came in September.

Q. That is not true?

A. No sir, that is not true.

Q. There is an affidavit of Frank J. Hill, and also an Affidavit of Patrick J. Cooley—you saw them didn't you?

A. Yes sir.

Q. In both of them there is an excerpt from the testimony purporting to have been given in the case of Lulu Biddinger against yourself in the action for Divorce. In that excerpt of the
321 testimony she appears to have testified as follows: Q. When did you separate? A. May 10th 1911. He left for New York May 10th, 1911." Is that true?

A. That is not true. The records of the Police Department show that I worked right up to the time until the 31st day of July, and lived there with her.

Q. The Records which are here now?

A. Yes sir.

Q. Prove that?

A. Yes sir.

Q. You lived with her after July 1911 didn't you?

A. Yes sir.

Q. Until what time? Well——

The Governor: About what time?

The Witness: November 1912.

Mr. Grossman (continuing):

Q. November 1912. Well, this letter appears to have been written to your wife on January 13th, 1912. Is that right?

Mr. Kresel: Right.

Mr. Grossman (continuing):

Q. This letter offered in evidence here appears to have been writ-

ten to your wife on January 13th, 1912. I ask you did you cease to live with your wife prior to the writing of that letter, or was it subsequently?

The Governor: Did you go back and live with her after you had written that letter?

322 The Witness: That is the wrong date in that letter, Governor. (Looking at letter.) I am not positive about that, Governor.

Mr. Grossman (continuing):

Q. Did you arrest a man named Diekelman in Chicago in 1912?

Mr. Kresel: He has already testified to that.

Mr. Grossman: But I want to get it in 1912. What was the date of Mr. Dickelman's arrest in 1912?

The Witness: That may have been 1911, Mr. Grossman. I have just been trying to think.

The Governor: I do not think that is material.

Mr. Grossman (continuing):

Q. You did make such an arrest?

—. Yes sir.

Q. All right. Either in 1911 or 1912, I do not care. You never voted in New York, did you?

A. I never have, no sir.

Q. Did I understand you to testify that you maintained an office in the City of Chicago in connection with the Burns Detective Agency?

A. With the Burns Agency?

Q. Yes, having a desk there, and that you considered that your headquarters; did you?

A. Yes sir. I was in the position of traveling man. I had to go wherever I was sent by my superior.

323 Q. And you were promoted in November 1913 to the Detective Sergeantcy with others upon the list whose names were——

The Governor: I understand that.

Mr. Grossman: All right, sir. Oh, another question. (Continuing:)

Q. When you were assigned by Chief Woods in April 1911 to Mr. Burns in connection with the dynamiting case, was the City of Chicago, or the State of Illinois interested in that case? You were assigned to Mr. Burns as a private——

A. No sir. They were very much interested in it.

Q. Had any of the acts involved in the McNamara conspiracy been committed in the State of Illinois?

A. Yes sir. A policeman had been killed there.

Q. So that a prosecution could have been had either in Illinois or California?

A. Yes sir.

The Governor: I am familiar with that.

Mr. Grossman: All right, sir. (Continuing:)

Q. The divorce in Illinois was granted upon the ground——

The Governor: I wouldn't go into that.

Mr. Grossman: Very well, sir. I wish to offer in evidence an affidavit—and Mr. Kresel can read this—containing the rules of the Police Department of the City of Chicago.

324 Mr. Kresel: I do not see that you need an affidavit. It has been already testified that those are the rules.

Mr. Grossman: It contains some other information which I have not had an opportunity to read yet.

Mr. Kresel: Surely you are not offering something which you do not know anything about.

Mr. Grossman: Of course not. But indulge me for a moment. I am endeavoring to hurry these proceedings on account of the Governor. I offer in evidence the affidavit of Martin W. Grosse, attached to which is a copy of the Rules and Regulations of the Police Department, showing that they are in force, or were in 1910, and when Mr. Biddinger received his appointment, and when he resigned.

Now I also offer in evidence——

The Governor: (Indistinct.)

Mr. Grossman: I also offer in evidence the affidavit of Robert E. Cantwell, showing that Mr. Biddinger was a resident of Chicago; and the affidavit of William Quinn, and also of William W. Quinn.

The Governor: Now, of course, I can't take that affidavit over an objection, unless you approve it.

Mr. Kresel: I submit that you can't, certainly, take that affidavit.

325 The Governor: I do not know how I can take Mr. Quinn's affidavit. I will examine it if you want me to.

Mr. Grossman: You have the right to accept any of the evidence, even telephonic communications. Any way, I offer them in evidence for what they are worth.

The Governor: I will accept them, under those circumstances. This is not testimony.

Mr. Grossman: No sir, but I can have him here, and am willing to produce him here.

Now let me se-. May I ask if that may be placed upon the record, if in Your Excellency's judgment it may be deemed proper,—the telegram of the Governor of West Virginia?

The Governor: I have no objection to your both seeing it. I have received this. I can't put it on the record.

Mr. Grossman: File it with the papers; all right. It may be filed with the papers, Your Excellency.

I also have here four affidavits on the question of residence, four Biddinger affidavits, members of the family, which I will offer.

The Governor: All right.

All of the above mentioned affidavits were received in evidence.

Mr. Grossman: And I will ask Your Honor to take this
326 case, and with one further observation I am through.

Now, if Your Excellency please, the Grand Jury of Cook County—I have told you that I did not believe that any grand jury would ever indict upon the testimony of witnesses of this character. Now, I am informed, and credibly informed, that the District Attorney of Cook County asked the grand jury to induct Mr. Biddinger upon the evidence of these three convicts. And the grand jury told him that they will never indict any man upon any such evidence, uncorroborated.

Now I say if the grand jury will indict him, let them do it. When you were District Attorney of New York county I do not believe you ever regarded the liberty of any citizen so lightly, but that you required the grand jury to come and consider that the evidence before you, and even asked another Governor, a Governor at that time, except perhaps in extreme cases, to mistreat a man. You have the right to expect the same thing from Illinois; and the fact that for three weeks they have not presented an indictment, or had one found, it seems to me is a very good reason why you should revoke your warrant.

I submit, Sir, with great respect, that the Executive extradition is too important a thing, and too exalted a warrant to rest upon evidence and affidavits of so obviously false and flimsy a character.

327 I ask you to revoke it.

Mr. Kresel: I want, in answer to one thing, to say——

Mr. Grossman: I also ask Your Excellency to consider that while we have brought Mr. Biddinger here, and put him on the stand, and let him be examined and cross-examined, and have waived my rights to redirect examination on account of the hour, although Mr. Weil is in town, he has not been produced here, and I have not been given an opportunity to cross-examine him. I have not been able to submit to Your Honor, therefore, the fact that he is under indictment in West Virginia.

The Governor: (Indistinct.)

Mr. Kresel: In answer to the question as to why there have been no indictments found, with Your Excellency's permission, Mr. Walker, who is Assistant State's Attorney in Chicago, and has been here on this case, will inform you as to the reasons why that has not been done. It is not true that the grand jury has been asked to indict. The information that Mr. Grossman has to that effect is absolutely false.

Mr. Walker: There is absolutely no ground for such a statement as this having been presented to the grand jury. If it was presented to the grand jury, it has been done since I left Chicago. Mr. Hoyne never considers that the State's Attorney of Cook County
328 has an extradition matter in a matter of this kind, unless there is corroboration. And I will say to Your Excellency here that Mr. Hoyne would never have instructed me to institute extradition proceedings directed to the Governor of Illinois, and to

e Governor of the State of New York, had he not had corroborat-
g evidence of some kind.

The Governor: Why doesn't he indict?

Mr. Walker: The reason, no doubt, that the matter has not been
esented to the grand jury is that he wants to give this man an
pportunity to be heard on a preliminary hearing in the City of
icago. And at the preliminary hearing of the 51 crimes, those
at he is laid over to the grand jury for, grand jury action will be
ken.

Mr. Biddinger: I met Mr. Hoyne here two months ago, and two
ieves had come to me and said that Bertsche was offering them
e hundred dollars a piece to make false affidavits. My attorney
s an affidavit from one of those thieves now. And I wrote to
r. Cantwell and told him to go and see the District Attorney, Mr.
oyne, and tell him that if he wanted me out there I would come
mediately; and that he would not have to go to any expense to
t me out there; that I was willing to go on the first train. Mr.
ntwell called to see Mr. Hoyne and told him that I would come
t there the very minute I was wanted, if there was anything to
these charges.

Four months ago I met Mr. Hoyne in New York, and five months ago I met him in Chicago. And I will say this, Governor, that I am willing to get on the first train out of here and go t there. Provided——

Mr. Kresel: Provided what?

Mr. Grossman: Provided that A. Leo Weil is not the gentleman hind it, and he don't have to fear Weil. That is absolutely the ason.

The Governor: You say you are willing to—what?

Mr. Biddinger: Saturday when they arrested me, and I furnished n thousand dollars bail for my attendance, I told the officers to re Chicago that I would come right on out, and I intended to go. nday morning, as I came out to go to church, they arrested me, d brought me to headquarters, and never gave me any chance at l. And when I saw the charges that I was charged with, that is, rmitting two persons to get away on the 1st day of May 1911, it s so ridiculous that I told my attorneys about it, and they said, They will never permit you to go back on those charges." And re is another thing, if Governor Hatfield of West Virginia would ve his consent, I would get on the train tonight and go to Chicago, d I will go the minute that Governor Hatfield will let me go.

Mr. Kresel: If the Governor of West Virginia gives you permission to go, you will go?

Mr. Biddinger: Yes sir.

Mr. Grossman: Your Excellency, he was perfectly willing go back. He so informed Mr. Cantwell, and Mr. Cantwell so informed District Attorney Hoyne. He told the officers when first prehended here and put under ten thousand dollars bail, that he ould go back. But when he was taken on Sunday morning, on ur Executive warrant, on his way to church, and when my iends go into the Supreme Court on a writ of habeas corpus on

Monday morning, and with Weil in conferences with Mr. Kresel, and he paying Mr. Kresel to do this, gentlemen, I say that then it became a different matter, and I said to Mr. Biddinger, "You have no right to go back to Illinois."

The Governor (indistinct): —whether he was in Chicago at the time these alleged crimes were committed. (Indistinct.)

Mr. Kresel: As to whether he was present in the jurisdiction, in so far as the 1908 and 1909 crimes are concerned, there is absolutely no question about that. I asked him particularly here, you will recall, whether he was in Chicago on the first of August.

The Governor: (Indistinct.)

Mr. Kresel: No, because he left in August 1911 according to his own testimony.

331 Mr. Biddinger: But I reported last September.

The Governor: You say there is a habeas corpus proceeding before a Supreme Court Justice?

Mr. Kresel: Yes: that is on tomorrow.

The Governor: Do you think they would be willing to adjourn that hearing?

Mr. Kresel: Our information, if Your Excellency please, is that that hearing before the Governor of Illinois was to be terminated this afternoon. They were waiting. They got together this morning, and then there were the papers they wanted——

The Governor: Will you see to it that the hearing before the Court is adjourned?

Mr. Kresel: Yes, if I have to do so to await your action.

Mr. Biddinger: (Indistinct—readjournment of the hearing in Chicago.)

The Governor: The hearing here is closed. I will render my decision in this case as quickly as possible.

B. W. Smith, Executive Stenographer, Executive Chamber, Albany, N. Y.

332 Before the Governor, Executive Chamber.

Albany, N. Y.,

June 23, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

333 Before the Governor, Executive Chamber.

Albany, N. Y.,

June 23, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Appearances:

Mr. Isidor Kresel, Hon. Samuel S. Koenig, and Mr. Henry A. Berger, Assisant District Attorney of Cook County, Illinois, in opposition to the application.

Mr. Moses H. Grossman, Mr. William S. Butler, and Mr. Hyman Turchin, in support of the application.

334 The Governor: Hearing in the matter of the requisition of the Governor of the State of Illinois for Guy Biddinger.

Mr. Grossman: Your Excellency, if Your Excellency please, I think I can shorten my observations this morning, because I am sure, particularly, that Your Honor has some recollection of the former argument in this matter.

The Governor: I am pretty familiar with the case Mr. Grossman. Is there anything that was not presented at the last hearing?

Mr. Grossman: Only this: As to the nature of the circumstances. Since our last hearing, indictments were filed against Mr. Biddinger, arising out of three of the fifty-one classes of crime charged against him; and in these six indictments, the only parties are three of the crooks and convicts who were mentioned in the former charges—Clarence Glass, Tommy Thomas, and Michael O'Donnell.

Now, Your Excellency suspended your determination of this matter and advised us that it would not be continued until after you had heard from the Governor of Illinois, who was having a contemporaneous hearing.

335 The Governor of Illinois, at the conclusion of a very lengthy hearing, the stenographic record of which I hold here, made these observations:

Governor Dunne, said, at the end of the hearing, as follows: He said:

"Here is the situation. A sovereign State institutes a prosecution. That prosecution has been pending for two or three years."

Governor Dunne refers to the prosecution in West Virginia against Mr. A. Leo Weil.

The Governor: Is this from the first hearing before Governor Dunne?

Mr. Grossman: At the end of the first hearing.

The Governor: I have conferred with the Governor of Illinois

personally in this matter. Will you please confine yourself to the second hearing before him?

Mr. Grossman: I have sent for a copy of that record, if Your Excellency please, but I was advised by the Executive Secretary, and also by the District Attorney of Cook County, whose Assistant is here, that no stenographic record of that hearing was had. And so, of course, I am at a total loss to know what occurred there, or what transpired, or what the reasons were for the action on the part of Governor Dunne.

Mr. Kresel: If Your Excellency desires to hear just what oc-
336 curred before Governor Dunne, Mr. Berger of Mr. Horne's office in Chicago, who was personally present and participated in the proceeding in this matter, will be glad to tell you.

The Governor: I am in this position: I know from Governor Dunne's own lips just what transpired. I do not mean the details, but the arrangements, or the promises which were made to him by the District Attorney, or by the State's Attorney of Cook County. And I am informed that the pledges were given that the trial of this case should not precede the trial of the case in West Virginia; and that the bail should not be excessive; that it should not be more than the bail offered in New York; and that the same bail as was acceptable in New York would be acceptable in Chicago. That being so I do not see the course of this.

Mr. Grossman: If that is so, then I think I can offer a solution of the entire situation which would be satisfactory to my friends, and satisfactory to us.

The Governor: I know, but the difficulty is—this is not a question of good faith. I do not question that. It is a matter between the State of Illinois and the State of New York.

Mr. Grossman: Absolutely.

The Governor: The indictments were found, and the in-
337 dictments themselves are not challenged. The indictments set forth facts which, if true, constitute a crime in the State of Illinois, and in the State of New York. It is not contended that the defendant was not in the State of Illinois at the time the crime is alleged to have been committed, and there is no contention as to any question of the identity of the defendant. That being so, it seems to me that there is nothing for the Governor to pass upon.

Mr. Grossman: As I understand it, Your Excellency, the promise made by the District Attorney of Cook County involves this: That if Mr. Biddinger goes back to Illinois he will not place him upon trial until after the trial of the case of the State of West Virginia against A. Leo Weil shall have been disposed of. If that be so, then what purpose can there be for the execution of the Executive warrant now? Let it issue and be suspended until after the trial of A. Leo Weil in West Virginia.

The Governor: (Indistinct.)

Mr. Grossman: That is the same thing. Well, now, see, he is under bail here. What difference does it make——

The Governor: There isn't any question as to what difference it makes. This is a question of the comity of the State. It is a

338 question as to whether I shall honor a requisition which has established, in all points, as far as I can see, in every important particular, a crime. It seems to me that I have got to recognize it.

Mr. Grossman: Has there been a communication from the Governor of West Virginia?

The Governor: Yes. I have a telegram from the Governor of West Virginia asking that the warrant be suspended. But I know of no such procedure as that.

Mr. Grossman: This is the first time, I take it, that this particular issue has arisen where it is not merely an issue between a foreign State making a demand upon our State for the warrant of extradition, but where the rights of another sister State intervene——

The Governor: But these rights are guaranteed in the pledges of the State officers of Illinois, which I am bound to respect.

Mr. Grossman: If that guarantee meant anything, Your Excellency, I should certainly not oppose the extradition. But how is Illinois going to be injured?

The Governor: That is not a question for me to pass upon. The State of Illinois has found these indictments. The Governor of Illinois has asked for this requisition.

Mr. Grossman: Yes sir.

The Governor: And the proceedings are perfectly regular.

339 Now, I am not anxious, or desirous, to do it one way or the other, but my duty is perfectly clear. I can see no possibility of any other proceeding which would be proper, or orderly.

Mr. Grossman: May I ask Your Excellency what guarantee or assurance there is as to the——

The Governor: I have got the word of the officer of the State of Illinois. I think that is to be relied on. It is on record before the Governor of the State of Illinois, and I understand it is on record here.

Mr. Grossman: Is it so recorded before the Governor of Illinois, Mr. Berger?

Mr. Berger: The statement was made at that time there.

Mr. Grossman: But it is not on the record?

Mr. Berger: What do you mean by "record"?

Mr. Grossman: Stenographic record.

The Governor: I have the word of the Chief Executive of the State of Illinois, and I shall accept it.

Mr. Grossman: But Executives pass away.

The Governor: So does the record?

Mr. Grossman: No, sir, not bail; that doesn't pass away.

The Governor: My duty is perfectly clear in this case. I do not think there are two sides to it, unless there is something to be

340 presented to me that has not already been presented.

Mr. Grossman: Well, I will urge what I can, and it is up to your Excellency to determine.

My position is this: At the conclusion of the first hearing before Governor Dunne, he stated the situation clearly, upon pages 96 and 97 of the stenographic record taken before him. He said:

"Here is the situation: A sovereign State institutes a prosecution."

That is in West Virginia—interpolated. "That prosecution has been pending for two or three years. It now appears that one of the witnesses for the prosecution," meaning Biddinger, "after living in New York for about five years, is indicted at the instance of the defendant in West Virginia," meaning Weil, "for crimes committed five to eight years ago in the State of Illinois.

"As I have intimated two or three times, we can talk about the legal effect of this case all we want to, but it is apparent that the effect is here on one side to discredit that witness and the effect is on the other side to clear that witness."

The Governor: Suppose the defendant is charged with murder in the City of Chicago?

Mr. Grossman: Do you mean Biddinger, or Weil?

The Governor: Biddinger.

341 Mr. Grossman: Yes sir.

The Governor: And he were a witness in West Virginia. Would I be justified in refusing to acknowledge the requisition of the Governor of Illinois?

Mr. Grossman: No. But Governor Dunne pointed out——

The Governor: The question is the same as between the States.

Mr. Grossman: But Governor Dunne pointed out——

The Governor: Yes, but he didn't have the indictment.

Mr. Grossman: I will explain that to Your Excellency in a moment.

The Governor: I am perfectly familiar with the record. But there was a subsequent hearing before the Governor after that first hearing; and after that hearing the Governor requested me to suspend the operation of my warrant. The indictments were found, and another hearing was had before the Governor.

Mr. Grossman: Yes sir.

The Governor: When he granted this requisition.

Mr. Grossman: Yes sir. But I am going to show to Your Excellency, if I can, that the reasons upon which Governor Dunne withdrew his original requisition apply with equal if not greater force now, and I am also going to show you, if I can, that the offer

342 of the District Attorney, even his promise not to place Biddinger upon trial on these indictments in Illinois until after the case in West Virginia against Weil has been tried and disposed of, is void and of no effect, and ought not to have any weight with Your Excellency. I will also show, if that be his purpose, that we can conserve it by keeping Biddinger under bail here in the sum of Thirty thousand dollars, which is less than what they would have him under in the State of Illinois.

The Governor: Is the representative of the Distri Attorney here?

Mr. Kresel: Yes. Mr Berger is here.

The Governor: What is your name?

Mr. Berger: Henry A. Berger.

The Governor: What is your official position?

Mr. Berger: Assistant State's Attorney of Cook County, Illinois.

The Governor: Assistant State's Attorney, Cook County Illinois. Were you present before Governor Dunne at this hearing?

Mr. Berger: Yes.

The Governor: And will you state for the record what was said, or what promises were made, if any, on the part of the State's Attorney?

Mr. Berger: There was considerable discussion there with
343 reference to the length of time it would take to have the Supreme Court, the United States Supreme Court, pass upon the proceeding there pending with reference to A. Leo Weil. It was stated that it would be determined immediately at one time, and then again that it would be determined within three or four months.

The position that we took in opposition to that contention was that it would not be determined until about a year or a year and a half from that period. The proposition was there made to Counsel for Biddinger, that if Biddinger would come back voluntarily we would give him the choice of going to trial at once so that his innocence, if it existed, could be established before the West Virginia case would be tried, or not try him until after the West Virginia case would be disposed of. That offer was not accepted by Counsel for Biddinger.

Mr. Kresel: What was said about bail?

Mr. Grossman: (Indistinct.)

Mr. Berger: On the question of bail, as I said to the gentlemen this morning, there would be absolutely no difficulty on that. I think they never will complain of our position on bail. The bail I think now, under the indictments as returned, is fixed at from five to six thousand dollars, in each case.

344 The Governor: It was represented to me the other day in the Executive Mansion, it was agreed that this case should not be put on trial until after the disposition of the case in West Virginia.

Mr. Berger: We gave to Counsel for Biddinger that choice at that time, before Governor Dunne.

The Governor: I don't care what you gave. What is the position now? Is it agreed here that this Biddinger case will not go to trial until after the proceedings in West Virginia are disposed of?

Mr. Berger: No sir.

The Governor: Then I will not grant the extradition. That was the statement that was made to me. I will adjourn this case. Unless that is agreed here I will not grant this extradition. That was the way it was represented to me here, and that is what was represented to me in Springfield.

Mr. Berger: You mean by some one connected with the State's Attorney's office, or by the Governor?

The Governor: It was stated in the Mansion when you and Mr. Walker were both present.

Mr. Kresel: (Indistinct.)

The Governor: It was made in my presence, and in yours, in the Executive Mansion. Isn't that so, Mr. Potter.

345 Mr. Potter: Yes sir.

The Governor: That there was an agreement on record that this Biddinger case would not be brought to trial, if the purpose was to defeat this trial in West Virginia, this case would not be brought to trial until after the Weil case had been disposed of. I made the same statement to Governor Dunne in the Executive Mansion in Illinois a week ago last Sunday, and he said that that was true. I will not grant it.

Mr. Koenig: (Indistinct.)

Mr. Kressel: You say that statement was made in our presence?

The Governor: It was made in your presence in the Executive Mansion. Yes sir. Don't you remember that?

Mr. Potter: Yes.

The Governor: You yourself didn't make it. I don't mean that. But it was made by the representative of the District Attorney's office in Chicago, and that was what prompted my statement to Governor Dunne, asking if that was true; and he said it was.

Mr. Kressel: If Your Excellency please——

The Governor: It is only fair that this should go on record. Here is a telegram from the Governor of West Virginia:

346 "Charleston, W. Va.,

June 21, 1916.

Hon. Charles S. Whitman, Governor of New York State, Albany, N. Y.:

In re extradition proceedings against Guy B. Biddinger I hereby request that you vacate your warrant of extradition or at least suspend the operation of your warrant until after the trial of the case of West Virginia against A. Leo Weil who is under indictment for attempted bribery for the reason that Biddinger is a necessary material important and indispensable witness against Weil without whose personal presence it will be impossible to convict Weil and the indictment will be dismissed. Biddinger is now under twenty thousand dollars bail in habeas corpus proceedings instituted after arrest on your executive warrant in extradition proceedings. In addition to his bond, I pledge you my word and honor of the State of West Virginia that Biddinger will appear when you want him. The State of West Virginia needs Biddinger more than the State of Illinois. The indictments on which extradition from New York is sought for based upon alleged offenses committed years ago. As Illinois has waited so many years she cannot be prejudiced by waiting a few weeks or months longer. On the other hand the
347 State of West Virginia will not only be prejudiced, but the justice of my State defeated by Biddinger's extradition to Illinois. The rights of the State of West Virginia are at least equal and I think under these exceptional circumstances are presently superior to those of Illinois. I respectfully but firmly and emphatically protest against this species of attempted legal kidnapping

of Biddinger and insist that West Virginia is at present entitled to priority over Illinois.

H. D. HATFIELD,
Governor of West Virginia.

Mr. Kressel: Well, Governor, of course I realize your position entirely in the matter; and if Governor Dunne made that statement to you, and I have no doubt he did, he believed that was a promise. If any promise was made, the District Attorney is here to back it.

I would suggest, if you will hold this say for a half an hour, or three-quarters of an hour, to give Mr. Berger an opportunity to call his Chief on the wire,——

The Governor: I am perfectly willing to do that.

Mr. Kressel: Simply to get his instructions in the matter, so that we can dispose of it. Suppose we come back——

348 The Governor: I will give you three-quarters of an hour. I am sure that was that understanding.

Mr. Berger: There was one session at which I was not present.

Mr. Koenig: Mr. Berger says that there was one session at which he was not present.

Mr. Kressel: Then we shall come back at half past one?

The Governor: Yes.

The hearing was thereupon adjourned until one-thirty for the purpose of giving Mr. Berger an opportunity to get in touch with the State's Attorney's office in Chicago on the question of what promise, if any, was made concerning delay in the trial of the Biddinger case until after disposition of the case against Weil in West Virginia.

At one-thirty, upon the statement of Mr. Koenig that Mr. Berger had been unable to reach the State's Attorney on the wire in Chicago, because of the fact that he was not at his office today, and upon Mr. Koenig's request that therefore an adjournment be granted, the Governor consented that an adjournment of this proceeding be had until Wednesday, June 28, 1916, at twelve o'clock.

B. W. SMITH,
Executive Stenographer.

349 Before the Governor, Executive Chamber.

Albany, N. Y.,
June 28, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Adjournment of Proceedings to July 20, 1916.

350 Before the Governor, Executive Chamber.

Albany, N. Y.,
June 28, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Appearances: Same as before.

Upon request of Counsel opposing the Application in the above entitled matter, and with the consent of Counsel for Mr. Biddinger, the Governor granted a further adjournment of these proceedings until Thursday, July 20, 1916.

351 Before the Governor, Executive Chamber.

Albany, N. Y.,
July 20, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Appearances: None.

On account of the Govern-'s absence from Albany, and at his request, the above entitled proceedings were further adjourned until Friday, July 21, 1916, at twelve o'clock noon.

352 Before the Governor, Executive Chamber.

Albany, N. Y.,
July 21, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Argument of Counsel re Further Postponement of Proceedings.

353 Before the Governor, Executive Chamber.

Albany, N. Y.,
July 21, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Appearances:

Samuel S. Koenig and Isidor Kresel, in opposition to the application.
Judge Joseph and Louis J. Vorhaus, for Mr. Biddinger.

The Governor: I understand, on the request for the extradition of Guy Biddinger, that it is the desire of Counsel in opposition to the application for the revocation of the warrant, that a further postponement of these proceedings be had.

354 Mr. Kresel: If it please Your Excellency, I appear to ask that the further hearing in this matter be adjourned to suit Your Excellency's convenience. I would suggest that it be put off until about the first week in August. I make this request, owing to the inability of Mr. Marshall, who is associated with us, to appear with us here today.

Mr. Marshall has, unfortunately, sustained the loss of his wife, which has broken him up physically and mentally, and he is up at Saranac Lake, and he wired me to ask Your Excellency to let this matter go over until the first part of August.

In addition to that, I wanted to have here Mr. Walker, the Assistant State's Attorney of Cook County, and I find that he is at present in Denver on an extradition proceeding, and will not be available until the first of August.

Under all these circumstances, I ask for an adjournment of this matter until some time during the first week of August.

The Governor: Now, Mr. Kresel, I find I am going to be pretty much occupied during the first week in August. On the first, second, third and fourth of August I am to be in the western part of

355 the State. How about the 11th of August?

Judge Joseph: Will Your Excellency hear me about the opposition?

The Governor: Yes, in a moment.

Mr. Kresel: When I got this word from Mr. Marshall, I communicated with Mr. Vorhaus and told him that I would make this application. Mr. Vorhaus stated, of course, (indistinct). Now I would urgently ask you not to postpone this proceeding as long as that, owing to the proceeding pending in the Federal Court. (Indistinct.) The only reason why they want it to go over to September is

that to proceed with it now will interfere with their vacation. Of course we all have to work.

Judge Joseph: May I state my reason for the opposition? In reading over the record of these proceedings I find that there is probably little to be said on this subject, in view of Your Honor's expression at one of the hearings. Your Excellency has stated that you wanted this stipulation, and they have refused to furnish it.

The language used by Your Excellency—May I call your attention to it?—is: "Then I will not grant the extradition. That
356 was the statement made to me. (Referring to the statement made.) I will adjourn this case. Unless that is agreed here, I will not grant this extradition. That was the way it was represented to me here, and that is the way it was represented to me in Springfield."

Now what is there to be said about this?

The Governor: Of course I am not going to foreclose them from presenting any information they may have. What objection is there to this date?

Judge Joseph: Mr. Biddinger wants to do some business, and has got to leave, and he will not return until about the middle of September.

The Governor: I will put it down for the 11th of August.

Mr. Kresel: At noon?

The Governor: At Noon.

Judge Joseph: (An indistinct suggestion as to making it the 25th of August instead of the 11th.)

Mr. Kresel: If you make that the 25th, that hearing before Judge Mayer will have to go over. I do not know whether Judge Mayer can take it up.

Mr. Vorhaus: Judge Mayer is going to be back on July 24th.

Mr. Kresel: If we find that we have got to have a day or two longer, why I shal- not stand in the way; but we do not want
357 it put over to the 25th.

Judge Joseph: Why not make it the 25th of August?

Mr. Kresel: That is a month.

Judge Joseph: Well, we are ready. You are the one who asked for this.

Mr. Kresel: I know; but that doesn't mean that it has got to be adjourned for a month because I asked for an adjournment. I have stated sufficient reasons for the adjournment.

The Governor: I think we had better go on with it on the 11th of August. But I haven't a free date before that.

Mr. Kresel: All right.

The hearing of further proceedings was thereupon adjourned until August 11, 1916, at twelve o'clock noon.

B. W. SMITH,
Executive Stenographer

358 Before the Governor, Executive Chamber.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Application for Further Adjournment.

359 Before the Governor, Executive Chamber.

Albany, N. Y.,

August 11, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Appearances:

Isidor Kresel, in opposition to the application.
Judge Joseph, for Mr. Biddinger.

Judge Joseph: I ask you Excellency to postpone this matter until about September 15th. Mr. Vorhaus was here at the last hearing (indistinct) when they asked for an adjournment because of the condition of Mr. Marshall.

360 Mr. Vorhaus was unable to be present today because of the (indistinct) condition of his father. His father is in a very critical condition and because of his age, he is over seventy, something may happen at any moment. I present the certificate of the physician. That leaves the case in this position. I would like very much to have Mr. Grossman present and assume the responsibility in this case. May I ask you to be good enough to postpone this until September 15th.

Mr. Kresel: I must oppose such an application for adjournment. Of course under the circumstances I would not force a hearing today, but I do think that where a matter has been dragged out as long as this has been there is no reason why we cannot have a hearing within a few days. If circumstances are such that Mr. Vorhaus cannot be here today, then I don't think I am unreasonable in asking that Mr. Grossman who had had six weeks' vacation might cut short his vacation for one day at least and come here for this matter for at least one day. Mr. Grossman could represent the interests of Mr. Biddinger, but if they insist on having Mr. Vorhaus here I cannot object to a short adjournment. However, I think an adjournment until September 15th is out of the question.

361 The Governor: Do you know the terms of the court in Illinois?

Mr. Kresel: There is the Chicago Criminal Court. I understand they have a term every winter the same as our court here.

Judge Joseph: But not in the summer. No harm can come to them because it is the summer vacation. He is under bail (indistinct).

Mr. Kresel: Let me point out to your Excellency that the case is not ended here. There is a habeas corpus proceeding pending. When this case here is disposed of (indistinct) they propose to go ahead. Your Excellency knows how long those matters take. The proceeding before Judge Mayer is adjourned pending your Excellency's decision. If we adjourn this until September 15th you can see what the situation will be.

The Governor: It was represented to me and I think truthfully so far as the persons making the representations are concerned at the time in May or early June that the case in West Virginia was to go to immediate trial,—I think that was the intention at the time. Delay was asked on behalf of the Governor of West
362 Virginia on the ground this would make immediate trial impossible. Several adjournments were granted and I think I said it was proper to do that and that I would refuse to grant this until they would agree it would not delay trial in West Virginia. I understand now there is an appeal in the Supreme Court of the United States which will in the end delay the trial in West Virginia a year and probably more. If that is true, I am satisfied the Governor of this State has no right to take upon himself any action which would delay the trial of a criminal proceeding in the State of Illinois for a year or a year and a half. It is proper, just, right and reasonable that I should insist that the trial in Chicago should not be delayed a year or two years. I have no right to involve the State of New York in that. It is the State of Illinois that asks the State of New York to grant a request. We have had six months' delay. I am going to grant this adjournment, but I think it is my duty to tell you I have no right to take any action that will delay trial in West Virginia.

Judge Joseph: I am going to beg of your Excellency most earnestly to allow this to be adjourned until September 15. They asked for an adjournment because of Mr. Marshall's condition, so that he could come here today; he has not been here.

363 Mr. Kresel: I understood Mr. Grossman's vacation would end August 25th; I don't see any reason why it should go over until the 15th of September.

Judge Joseph: Mr. Grossman is taking his vacation and Mr. Vorhaus' father is critically ill.

Mr. Kresel: Your Excellency, why cannot Mr. Grossman come. Your Excellency set it for a week from today.

The Governor: I will not be here.

Judge Joseph: I am going to ask your Excellency to allow this to stand until September 15th. Mr. Kresel had this date fixed. Now I am asking for an adjournment.

The Governor: I will make it September 9th at 10:30 A. M.

364 Before the Governor, Executive Chamber.

Albany, N. Y.,

September 9, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Final Hearing — Revocation of Warrant Denied.

365 Before the Governor, Executive Chamber.

Albany, N. Y.,

September 9, 1916.

In the Matter of the Application for a Revocation of the Warrant of the Governor of New York in Proceedings for the Extradition of GUY BIDDINGER as an Alleged Fugitive from Justice of the State of Illinois.

Appearances:

Mr. Isidor Kresel and Hon. Samuel S. Koenig, in opposition to the application.

Mr. Moses H. Grossman, Mr. Hyman Turchin, and Hon. Lemuel E. Quigg, in support of the application.

The Governor: Hearing on the application for the extradition of Guy Biddinger.

366 Mr. Grossman: Yes, if Your Excellency, please. I have just refamiliarized myself with the record after my return from vacation, which I thorough- enjoyed.

The Governor: Excuse me a moment (Conferring with Mr. Potter and Mr. Koenig concerning some pardon case hearing).

Now, Mr. Grossman, you may proceed.

Mr. Grossman: The last time I appeared before Your Honor, you ruled that you——

The Governor: I am thoroughly familiar with what I did. If you will kindly go on with your argument.

Mr. Grossman: Yes, sir. Thereafter an opportunity was given to State's Attorney Berger to communicate with his principal and, being unable to reach him, an adjournment was asked for. On the adjournment day Mr. Kresel appeared and he asked for an adjournment upon the ground that Mr. Marshall had met with some misfortune in his family, and was therefore unable to appear, and Your Excellency indulged him with another adjournment.

Now, as I understand the situation, Mr. Marshall is not here today.

Another ground for that adjournment was, as stated, that it was desirable to have here Mr. Walker, the Assistant State's Attorney of Cook County. I understand that he is not here today.

Now, we come back to the situation as it existed on the day when I last had the honor of appearing before Your Excellency,
367 and I have had explained to me what changes have occurred since that time, and I wish to state before Your Excellency the facts in order to correct whatever of errors may have crept into your mind.

The Governor: If you will please come to the facts. All right, so far so good. First what is there new to present. I don't mean to cut you short.

Mr. Grossman: I understand that. I understand that at the last hearing Your Excellency stated that at the time when you ruled that you would refuse extradition unless the District Attorney of Cook county stipulated that he would not try Biddinger until after Weil had been tried in West Virginia, that you were under the impression that Weil would be tried at once in West Virginia.

The Governor: The statement was made to me that the case was going right on in West Virginia.

Mr. Grossman: Now, as a matter of fact, Your Honor has forgotten the facts as they appear upon the record, and I am going to correct you, and I think I can satisfy you beyond the peradventure of a doubt——

The Governor: Go ahead. I am waiting for you. The statement was made at the hearing in May, I think it was, that the trial was pending in West Virginia, and that the case would proceed
368 to trial, that Biddinger was being taken to Chicago to prevent the trial. It seemed to me unfair, and I think still that it was unfair. I stated then that it seemed to me wise that the case should be held in Chicago until the case should be disposed of in West Virginia, and the representative of the District Attorney in Chicago stated to me in the Executive Mansion, that that would be done.

Subsequently it developed that the case, owing to various steps which it has been found necessary to take, could not be reached until probably another year, or perhaps two years. A certificate was filed here from the Clerk of the Supreme Court of the United States to the effect that a motion made there would delay the case until March or April of next year, and that the case could not be tried until another year.

That being the case, the State of New York is not in a position of holding up the case in Illinois for a year and a half. Of course I am unjustified in putting the State of New York into that position. The trial has been put over from time to time until the present time. I think the case could be tried in West Virginia, or should be tried in West Virginia. I am not in a position to determine that the
369 case should be held up in Illinois for a year and a half. That is the situation.

Mr. Quigg: Can I interrupt at this point for a few moments?

Mr. Grossman: Certainly, Mr. Quigg.

Mr. Quigg: If Your Excellency please, I have no interest in Biddinger, except as he is concerned in the trial of Weil. Growing out of correspondence and conversations that I have had with the authorities of West Virginia, extending over about two months, the Prosecuting Attorney of Kiowah County, Mr. Townsend, wrote me this letter which I should like to ask your Honor to let me place on the record.

The Governor: Have you a copy of it?

Mr. Quigg: May I read it to you, and may I have it placed on the record?

The Governor: Certainly.

Mr. Quigg: The letter is as follows:

"September 5, 1916.

Hon. Lemuel E. Quigg, New York City.

"DEAR SIR: WYou have already been advised carefully of the action pending in this jurisdiction against A. Leo Weil, an
370 attorney engaged in the pursuit of his profession in Pennsylvania. You were informed of the indictments against Weil in Kiowah county, West Virginia, and of the expediencies to which Weil has resorted in the Federal Courts to delay his trial here.

You are informed of the relation of Guy Biddinger to this case as a witness against Weil, and of the proceedings that have been taken by indictment against Biddinger in Cook County, Illinois, admittedly at the instigation of Weil and for the obvious purpose either of removing Biddinger from our jurisdiction, where we need him as a witness, or for the purpose of destroying the effect of his testimony, or both; and you know of the application now pending before the Governor of New York for Biddinger's extradition upon the Cook county indictments.

Owing to the peculiar conditions of this case, I feel that the State of West Virginia is in need of your services in New York, perhaps in Illinois, and perhaps in West Virginia, and I desire to retain you generally with a view to the prosecution of Weil and the protection of the interests of this State in New York and in Illinois.

371 "Of course the State of West Virginia has no desire to interfere with the administration of justice in the State of Illinois. The Cook county complaints against Biddinger, however, are so ancient, so plainly outlawed, so trivial and so obviously framed up, that I am compelled to employ every lawful means to prevent *to* improper an artifice from defeating me in the performance of my duty to my State, especially as the District Attorney of Cook county has admitted before the Governor of Illinois that these charges against Biddinger were brought at the instigation of the defendant Weil.

"Please inform me at your earliest convenience whether or not you are in a position to act for me.

"Respectfully,

T. C. TOWNSEND,
Prosecuting Attorney."

Now, Sir, I only wanted to interrupt to say that I am not interest- in Biddinger, except as he is concerned in the prosecution of Weil. But I want to make a very earnest appeal to Your Excellency, either not to extradite, either to refuse the extradition, or to give us a chance to go back to Governor Dunne.

372 I will take the letter first. Give me that memorandum of Governor Dunne's. Here it is. When this matter came before Governor Dunne on the Magistrate's——

The Governor: Yes, I remember that, because I have talked with the Governor myself about it.

Mr. Quigg: Yes sir. Now on that the Governor showed that he — grave doubt as to whether he ought to ask for the extradition. He said on that occasion, upon the suggestion that if he did not ask you to extradite that the proceeding that had been hung up by Weil in West Virginia might be definite and interminable, they urging that this prosecution of Biddinger must come promptly, otherwise it might be delayed for them by Weil's operations. The Governor said:

"That is true. But there is a very serious charge here of enormous value to the community in West Virginia against Weil. The case against Biddinger here is serious, but it is Police grafting and is petty in comparison with the charge in West Virginia. I do not think I ought to step in or interfere in any way while they are on that proceeding."

Now Sir, I want to say this to you: What Weil did in West Virginia was not only the gravest sort of crime, according to the

373 indictment, the crime of bribery of a public official, but it was a peculiar affront to and assault upon the integrity of the State government, and against the personal morality of the Governor of West Virgina.

And he comes here, through me, profoundly insistent. One of the Public Service Commissioners whom this Weil undertook to bribe was the Governor's own brother in law. Now Sir, I do not suppose that if you had a brother in law you would appoint him to the office of Public Service Commissioner. Perhaps you would not subject yourself to the charge of (Indistinct). But the Governor of West Virginia thought he knew his brother in law, and he did appoint him.

And this man Weil got at his brother in law, and it was by the merest, formal incident, Sir, that Governor Hatfield found it out. And when he found it out, he removed his brother in law from the office, and thereafter his brother in law was removed to a hospital, after the interview with the Governor in which the Governor found it out, his brother in law was removed to a hospital in Charleston and stayed there three weeks. And, having come from the South, I don't blame the Governor of West Virginia in that five minutes administration of true justice. Can you blame him for feeling intensely about this?

374 Now Sir, you can see well what harm will come from sending Biddinger back to Illinois. He could be tried there in the course of six months, or perhaps he could give bail. He could be tried.

Governor Whitman, you have been District Attorney of New York City. You know the conditions in great cities. You know the conditions in countries like West Virginia, Tennessee and Kentucky. You know that there are cities in every State where no man's life is safe. You know that life in the City of New York, within ten minutes' walk of the place where you lived, a man, similar in condition to this Biddinger, was killed, and if you had not been there at that minute, ten minutes after the murder, what would have happened?

Now, Sir, I say to you that we do not want Biddinger exposed to those chances. Moreover, the crime he committed, if he committed a crime, may have been committed in Lake County, Illinois, in one of these indictments. If you send him back, and he is bailed, he is not free. He can be seized there on the Lake county indictment.

Now, if Your Honor please, here, we feel that the attack is not only upon the integrity of the State, but upon the honor of the Governor, and that the bail is excessive on this, and we beg you to let us
375 have time enough to go back to Governor Dunne.

Within three days Governor Dunne has told Mr. Cantwell,—I say this, Sir——

The Governor: Cantwell?

Mr. Quigg: Yes, sir. I say this, Governor, as an attorney will full responsibility. Mr. Cantwell, as you know, is a responsible attorney in Illinois. Governorn Dunne has said to Mr. Cantwell within three days that if he had this application before him again that he would not grant it. You can see from this statement here that he is uncertain about it.

The Governor: Well, Mr. Quigg, it is only fair to you, and to Governor Dunne, to say that after another hearing, and another requisition on indictments found, he granted it, and he stated fully at that time that the grounds presented to him constituted a case in Illinois, and that it was his duty to grant the requisition, and he has communicated with me within a short time.

Mr. Quigg: Yes sir. And now, Governor, he says that he doesn't feel right about it, and that he wouldn't blame you for not feeling right about it, and that he feels that he is being employed, (I shall not use his words, but I mean that this is the sense of it) as a tool
in a conspiracy to protect this Weil who, after a five year
376 indictment, has framed up these things in Illinois against his principal accusers.

Now sir, I want to show you what sort of person he is, because it all goes to the guts of the thing. There is no use talking about your duty being ministerial when nobody can compel you to perform it. There is no power that can say to you whether you shall extradite or whether you shall not.

I want to show you what sort of person is doing this thing. He writes a letter to Byrnes, the detective. You know of Biddinger's employment with Byrnes.

The Governorn: Yes.

Mr. Quigg: And on November 24th, 1914, November 24th, 1914—you ought to have a copy of this letter, on his paper. He

writes a letter—he writes this. He had employed Byrnes to go down to West Virginia and get from Governor Hatfield's brother in law and another Commissioner, proof that Hatfield had forced them not to grant these rates, not to grant these rates.

Now, he says, that Mr. Biddinger accordingly went to work for him for fifty dollars a day and his expenses. He says: "I told Mr. Biddinger that an article had been published in the Parkersburg papers which charged directly that the Governor had de-
377 manded the decision. I told Mr. Biddinger that General Eddy (&) had been employed by me at his request to obtain evidence of these facts."

Now he says that the arrangement with Biddinger is this: That if these men told the truth, these Commissioners told the truth, and he, and the three lose their jobs, we would naturally feel friendly to them, and under some obligations, and would be disposed to do something for them (indistinct).

Now on that, he says, that was all he said. And that when he found out that they had actually offered to the Commissioners in his name their salaries for the expirations of their terms, he was dumbfounded, and he says he was dumbfounded because as one of them had a six year and the other an eight year term, only a short part of which had expired, this would have been an enormous payment.

Governor, you must smile at that. That is the reason, and the only reason, and he comes here denying that he made the agreement. Then he says: "I authorized him (that is, Biddinger) to make a definite proposal and five thousand dollars for his services, if he secured affidavits from the two Commissioners, and that if he obtained the affidavits, and they thereafter lost their positions, he would be willing to pay them ten thousand dollars."

378 That is the man you find that this effort is being made to protect. Now sir, I say this: I appreciate your position perfectly. I say that I do not think you are entitled to go into any of these things that I have been reading to you. I do not think you are. But I think you must feel that I have presented such a case to you of conspiracy to get this man out of the State, a citizen of New York now, and such a conspiracy to defeat the ends of justice in West Virginia; and I have shown that it proceeds from a man who is willing to go any expedient whatever to accomplish his ends, that you can at least do this:

You can at least give me a chance, together with Mr. Townsend and Mr. Cantwell, to go to Governor Dunne, seeing that Governor Dunne says he has come (indistinct), seeing that he says in a telegram to us that he never said he would not allow extradition to New York; that he would not do anything like that; and that anybody who said he had done that was a liar. You have that telegram here, haven't you? (To Mr. Grossman.) Well, he does say that.

He is not going to hold up your requisitions because you are in the State of mind that he is with regard to this one.

379 I ask you now to give us six weeks in which we can appear before Governor Dunne. Now my situation is this: In order

to do this right I have got to see Mr. Townsend again. I have either got to go to West Virginia, or get him here. He has written me this letter employing me generally in the prosecution of Weil, for Illinois and for West Virginia. I have got to defer some trials that are coming on very promptly, some preliminary examinations that are to be taken in September, in order to accomplish this.

And I ask Your Excellency to give me six weeks so that I can get this matter again before Governor Dunne and ask him either to withdraw his application before you, or to ask you in granting it to stay its execution. I believe he will do one or either of these things.

Mr. Grossman: Now, if Your Excellency please, at the time when that statement was made to you by Governor Dunne he knew, because he had been told, and it appears upon the record before him, that the Weil case in West Virginia could not be tried for at least a year and a half because Weil did not want it tried, and he having obtained a supersedeas and a stay for himself, West Virginia could not put him on trial.

And it appeared there by a statement to Governor Dunne of District Attorney Townsend, who said to Governor Dunne that the trial in West Virginia of Weil may be interminable, it may be
380 weeks, it may perhaps be months—his wire has the exact language——

The Governor: That is not the question at all. The extent of the statement to me was that it was stated to you. I have no right to hold up the extradition for a year or two years, or for any indefinite period. This requisition is regular in form.

Mr. Quigg: Yes.

The Governor: And all the elements of a crime appear. That is the charge. In every particular the law governing extradition has been conformed to. I did delay a reasonable time on the representation to me that this case was coming to trial in West Virginia. I do not think the Governor of the State of New York has the right to hold up a trial of a case in a sister State for a year.

Mr. Quigg: Neither do I.

The Governor: That is the whole question.

Mr. Grossman: You are absolutely right.

The Governor: I cannot try this case on the merits here. I assume what you say is true. But the requisition is here and regular in form. The defendant has been identified as the person named. There is no question about his identity, and there is no question but what the charge constitutes a felony under the laws of the
381 State of New York, as well as under the laws of the State of Illinois.

Mr. Quigg: Certainly not.

The Governor: It seems to me that I am in a position where I cannot go further. I am perfectly willing to——

Mr. Quigg: But, Governor, you can do what I ask you, what I request you to do.

The Governor: I think you are asking rather too much.

Mr. Quigg: Do you mean in the matter of time?

The Governor: Governor Dunne has had this before him twice, and he has communicated with me directly. I had quite an extended conversation with him in Springfield, and have had a letter from him within two or three weeks, in which he urges the granting of this requisition, and states that he asks for it unqualifiedly, and that as the Governor of a sister State it is my duty, as it would be his, to honor it; and I think he is right. I do not see how I can properly hold it up.

Mr. Kresel: Will you hear me a moment?

The Governor: After the other gentlemen are through.

Mr. Quigg: Give me just a moment.

The Governor: What do you say, Mr. Kresel?

Mr. Kresel: Your Excellency, of course, does not want to
382 have from me any answer to the various things that have been said about Mr. Weil.

The Governor: I do not, certainly. No.

Mr. Kresel: I do not think Your Excellency is going to try the Weil case here, or the Biddinger case.

The Governor: Certainly not, and I know the Counsel do not wish me to.

Mr. Kresel: With what I am about to say as to the purpose of this application, Your Excellency, and Mr. Quigg will please understand that I do not mean to cast any reflection upon him. I think he has come here in good faith, and has made this application at the request of his client, the District Attorney of Kiowah County.

Mr. Quigg: I know it.

Mr. Kresel: But I think that Mr. Quigg is being used, if I may say so, in an effort to delay this proceeding in Chicago, and not in order to grant West Virginia an opportunity to have an unsullied witness against Mr. Weil, but in order that the time may elapse, and that perhaps Election day will put into the District Attorney's office in Chicago a man other than Mr. Hoyne.

Now, I am basing this, Governor, not upon any information coming to me seconded hand, as Mr. Quigg seems to have his information from the man named Cantwell, as to what the Governor
383 thinks, notwithstanding his letter to you, but I am basing this statement upon a letter written by Biddinger himself, of which I have a copy.

It is not necessary now for me to say to Your Honor how I got the copy. I have it. And I want to read to Your Excellency what Biddinger's intentions are in this matter, and why he has fought us to this time to delay the proceeding before Your Excellency.

This is a letter dated last June, June 10th. It was shortly after these indictments had been found and the second request made upon Your Excellency.

Mr. Quigg: This year?

Mr. Kresel: Yes, this year. And it is addressed to a man——

The Governor: What is the date?

Mr. Kresel: June 10, 1916. That was at the time Your Excellency was in Chicago. The warrant was signed on the 3rd. This is the letter as written to a man named Bob:

"My Dear Bob: I have *have* acknowledged the receipt of your telegram informing me that you had met Governor Hatfield, Mr. Hallanan and Mr. Townsend."

384 Now, Mr. Townsend is this District Attorney of Kiowah county, as you, Governor personally know. As to who Hallanan is, I do not know, and I cannot tell Your Excellency.

"I was not here when the telegram was received"

This was written from New York.

"and Val"

That is Val O'Farrell, with whom Biddinger is in business.

"did not know what to write. I sincerely hope that you have seen Governor Whitman, with Governor Hatfield, and explained the entire situation. I went into the Federal courts here Thursday afternoon on a writ of habeas corpus."

Now, Your Excellency knows that after this present warrant which is now outstanding was granted by Your Excellency, they went into the Federal court of New York and sued out a writ of habeas corpus which is now pending before Judge Mayer, awaiting Your Excellency's determination of this motion to revoke.

"I went into the Federal court here Thursday afternoon on a writ and had my case continued until June 27th. Judge Mayer
385 reduced the bond from thirty to twenty thousand dollars. He is a Hebrew Judge, and I am presuming that he will give me the worst of it on the 27th."

Mr. Quigg: No*n*, no no. Don't do that. That is not in point here. You haven't to do with that, Your Excellency.

The Governor: No, No. That doesn't make any difference. I will hear the letter.

Mr. Kresel: "According to the law here it is optional with him whether or not he grants a stay to make the appeal. In case he does I can bind (?) the matter over until October or November. If he does not grant the stay, we are going back to the State court on another writ and try to secure a stay from the State courts. If I am not successful in securing the stay in either of these courts, there will be nothing left for me to do but to go to Chicago and face the music."

In another letter, written on June 12th, to a man named Walter J. O'Brien, he says this:

"My case has gone over until July 25th 1916. I am sure I can tide it over until after Hoyne is through. I have met several Democratic Congressmen from Chicago, and have also met a few business men. They are all very hostile towards Hoyne, saying
386 they will do all in their power to defeat him. Se- Cantwell."

That is probably the Cantwell whom Mr. Quigg referred to.
Mr. Quigg: Yes, that is the Cantwell whom I spoke of.
Mr. Kresel: "Keep me posted.

Yours,

GUY."

Now then, if Your Excellency please, I have been driven to use this correspondence. I have had it, however, well, for a month at least.

Mr. Quigg: (Indistinct interruption.)

Mr. Kresel: I have had them too on the other hearings here since, but I have not intended using these at all until I have been compelled to bring them in here by my friend Mr. Quigg who now comes before Your Excellency. You know him well. You would take his word, as I will, in everything he says. But I say that he has been misguided and misled. It is not Kiowah county that wants to delay this thing; and it is not Weil who wants to delay this thing. But it is Guy Biddinger. Guy Biddinger wants to use Your Excellency and your high office in the State of New York for his own purposes, namely, to delay this proceeding so that he doesn't
387 have to return to Chicago until possibly Mr. Hoyne will be out of office.

Now, Mr. Hoyne won't be out of office, from the best information that I can obtain. I think Mr. Hoyne is going to remain as District Attorney there.

The Governor: There is quite a little uncertainty I suppose.

Mr. Kresel: Yes, quite a little. But I do not think Your Excellency has said that you can allow this office to be used for such a purpose.

The Governor of Illinois, he has ruled one way upon one set of facts, and he has ruled the other way upon a different set. And his attitude in the matter, although at first it would seem inconsistent, I think is perfectly consistent when you consider the facts.

The first application, as Your Excellency knows, was made to him upon a warrant issued by a Police Magistrate, I think it was argued here, by some Police Magistrate in a suburb of the City of Chicago, as though that made any difference as to where the Magistrate was.

But the fact was that there were no indictments. That no body of men charged with that duty had passed upon the question as to whether there was, or whether there was not, sufficient evidence upon which a conviction might be obtained.

388 And upon the showing that was made before Governor Dunne upon the application to revoke his requisition, I do not know but that he was right in revoking it.

But when the District Attorney of Cook county went in before the Grand Jury and laid his evidence before that body, and they returned six indictments against Biddinger, and the District Attorney renewed his application before Governor Dunne, and put the question direct up to him and said "the responsibility, Governor

Dunne, is yours," that was a different matter. They had a full hearing. They heard their evidence.

The Governor: I am familiar with all that.

Mr. Kresel: Counsel both for the State of West Virginia and Biddinger were there and argued it out, and he granted this requisition. And in addition to that, he telegraphed to Your Excellency, and wrote to Your Excellency and said "I want this extradition granted."

Now, because Cantwell, Biddinger's attorney in Chicago tells Mr. Quigg that Governor Dunne within a few days has said that he might act differently, were an application made to him, is that a reason why a case that has been pending before Your Excellency since April should again be delayed for a month? It seems to me that that is preposterous. They should go to Governor
389 Dunne, they should have gone, they have had a month since the 11th of August when this application was on, within which to have gone before Governor Dunne.

But if Your Excellency does think that they ought to have an opportunity, is a month required to do that? In reality I do not think, Mr. Grossman, that you are entitled to a single day.

Mr. Grossman: I also have a document which I did not intend to read either, only instead of it being a letter it is an affidavit.

Mr. Kresel: Go on, read it.

The Governor: If you want to read it I will hear it.

Mr. Grossman: I desire to explain it, Sir. My friend has read a letter from Mr. Biddinger, in the worst interpretation, that he is apprehensive of an adjournment because of his *fath* being that of Weil, which of course is absurd, and the other, his fear of Hoyne.

Now I am going to show you why he is afraid of Hoyne, and a perfectly natural desire upon any man's part not to want a District Attorney to try him who is not merely a prosecutor but a quasi judicial officer; and unless a District Attorney is that, every decent citizen ought to be afraid to be prosecuted by him.

390 In this case Your Excellency knows that upon the first application we demonstrated that there were fifty-one charges of crime, forty-eight of them made by one man, Singleton, absolutely untrue because charged as *or* personal knowledge, when he sat right here and admitted that he hadn't any knowledge of the facts, which wiped out forty-eight of them; and the other three made by three individuals who admitted in their affidavits, and it was admitted by the District Attorney of Cook County, Illinois, that each of them was a convicted felon, having served terms in prison, and being professional crooks.

And not only did that happen, but I got the affidavit of a man involved saying that the affidavits were false. Of course, they hadn't a leg to stand on. And what happened? When Governor Dunne withdraw his requisition upon that kind of a case, they came to this District Attorney, whom Biddinger fears, and got him to go in before the Grand Jury, and he came back with six documents labelled indictments.

Have you examined them? Three of them involve a crook named

Clarence Glass, one a crook named Tommy Thomas, and two a crook named Mike O'Donnell, and on the back of those indictments were the names of eighteen or twenty persons, everyone of
391 them crooks, except the Police Officers who testified to some formal technicality, or technical matter, and I think some other former technical witnesses.

Now, I have here an affidavit from an officer of the Supreme Court of the State of Illinois who knows that if false it means his disbarment or ruin of his reputation, and his ostracism from society. He interviewed Tommy Thomas and Clarence Glass whom, these indictments say, were called as witnesses.

Mr. Kresel: You are on the merits of the case.

Mr. Grossman: No, not the merits. They say they never appeared before the Grand Jury; that they never testified.

Now I say it becomes a serious matter when a District Attorney,—I do not say anything about the truth of these statements. I present to you this affidavit made by an officer of the Court under oath, saying that these men told him that they did not testify.

Now, I say, it becomes a very serious matter for a District Attorney charged with the performance of a duty, and who under certain requirements make a misrepresentation to his Governor, and a misrepresentation to you, because if it be true that these two men did not testify, it may be equally true that the other men
392 whose names appear, did not appear.

The Governor: How can I try the District Attorney of Cook County in this proceeding?

Mr. Grossman: No. But ought we not to have an opportunity——

The Governor: You had had opportunity for five months.

Mr. Kresel: What opportunity?

Mr. Grossman: To be considered, or to prepare ourselves against an iniquitous effort to bring us back to a State where the cards are stacked, and where we won't have a decent chance to prove our innocence.

Mr. Kresel: You have had abundance of opportunity——

Mr. Grossman: Wait a minute. When we indicted your client, Mr. Kresel, in the State of West Virginia we said to him "your case is going to be tried at once." What did he do? He got a written prohibition. He tied us up, and he has us tied up now. And Mr. Townsend, the District Attorney of Kiowah county says to him, "come back, and we will try you tomorrow," and he said, "no, I won't come back; I don't want to be tried."

Now then Biddinger, however, unlike Weil, was not indicted immediately after he committed, or is alleged to have com-
393 mitted a crime. Biddinger's crimes are said to have been committed before Noah's flood; before the Revolutionary War. The newest one is over six years old. Now if Illinois has waited all of this time——

The Governor: I thought it was only two or three years.

Mr. Grossman: I beg Your Honor's pardon. September 1910 is the very latest date, and that is over six years old. Now I say this, that if Illinois has waited for over six years and then found an

indictment against a man, tell me why Mr. Quigg's earnest plead for a postponement of six weeks is improper? And why is it necessary for any particular District Attorney, whether his name is Hoyne, or Coyne, to try a man who is guilty. The presumption is that any District Attorney will do his duty.

The Governor: Certainly. Am I bound to proceed on that assumption.

Mr. Grossman: Yes sir.

Mr. Kresel: What has that all got to do with the point in question?

Mr. Grossman: It has this to do with it, that——

The Governor: Now gentlemen, if you have any further facts I should like to present them. I do not mean to cut you short.

394 Mr. Quigg: May I have another word?

The Governor: Certainly.

Mr. Quigg: Now I have got no facts, further facts than you know, to present to you. You know the case, sir. I say that in view of the information I have from Mr. Cantwell, and in view of your Excellency's statement that any District Attorney might try this thing——

The Governor: I ought to assume that.

Mr. Quigg: That argument of Mr. Kresel's doesn't go. I will withdraw the six weeks and make it three. I will go right away down to West Virginia.

The Governor: Why, Mr. Quigg, it is pur-ly a question of the attitude of the Governor of Illinois. He has communicated with me several times. I have heard from him very recently insisting, as he had a right to, that this requisition, on the indictments presented, should be granted.

Mr. Kresel: But, Your Excellency, he has a writ pending which has got to be heard before Judge Mayer. It will take weeks before that is disposed of. If they can make an application to Governor Dunne to revoke his requisition, they have got all the time they want. They do not have to hold us up here, and at the same time hold us up in New York.

395 Mr. Quigg: I do not believe that Mr. Kresel is going to be much damaged by a delay of three weeks.

Mr. Kresel: You have had these facts since last April.

Mr. Grossman: We haven't had Weil since about a year ago last January.

The Governor: Now gentlemen, I stated at the time of the last hearing that I should grant this requisition at this time. I certainly have given counsel abundance of time and opportunity for their needs. It seems to me that it is my duty to grant it.

Mr. Quigg: I think probably that is so. Sir. I ask you because I can't see how you can't grant it except upon the ground that he is not a fugitive from justice. That might be presented to you.

The Governor: I think that is, within the——

Mr. Quigg: Within the decisions of the Supreme Court of the United States, and under this decision of the Governor's.

Mr. Kresel: I have said to you that the proceeding before Judge

Mayer can't possibly be heard for two or three weeks. They have got plenty of time in which to make their application if they want to.

396 Mr. Quigg: Neither of us is going to be hurt by letting me have three weeks more. I won't expidite the the trial of either person for you to let me have three weeks more with which to reach Governor Dunne and have a hearing before him. I will do honestly that, and I ask it on the ground that no harm can possibly be done, and conceding no harm to be done, and conceding to Your Excellency that as soon as you go into the question of fugitiveness, which I do not think it worth while, there is nothing else you can do except to grant this extradition. I do not see it——

The Governor: I am perfectly clear on that.

Mr. Quigg: So am I.

The Governor: I think it is my duty to grant the requisition. It seems to me that this is a reasonable request.

Mr. Kresel: Perhaps I can solve this. I will stipulate here, and Mr. Grossman is on the other side of the proceeding before Judge Mayer, that we won't have a hearing before Judge Mayer, say, for two weeks. Now that gives them plenty of time.

The Governor: If you will make that, it ought to give——

Mr. Quigg: Give me three weeks.

Mr. Grossman: I can't be had any way until after Octo-

397 ber 1st.

The Governor: Gentlemen, I will adjourn the hearing. I am going to grant this requisition. I think the stipulation that the warrant would be held for three weeks on account of the proceeding before Judge Mayer, if that is the stipulation you made——

Mr. Kresel: There will be no hearing before Judge Mayer before the first of October.

The Governor: The hearing is adjourned.

Mr. Grossman: May I for the record, if Your Honor please, file a copy of the proceedings had before Governor Dunne, and make that a part of the record?

The Governor: Yes.

Mr. Grossman: And file whatever affidavits upon the question of Biddinger's residence in Chicago I *amy* be able to obtain in the course of two weeks? And then we will have our record complete. I will send you a copy of each and everything I have got, excepting the hearing before Governor Dunne, of which you have a copy.

Mr. Kresel: I do not know that Your Excellency should permit him to file any new affidavits that he pleases.

Mr. Grossman: Affidavits of residence, simply.

The Governor: I think he will provide you with copies of them. As a matter of fact, the filing of affidavits after the conclu-

398 sion of a proceeding of this nature would be somewhat irregular. But I think I should allow it in this instance.

Mr. Kresel: Will Your Excellency state upon the record that in granting this extradition you have acted upon the evidence taken before you in that first proceeding? You remember the testimony that was taken. The evidence that was taken has been transcribed

by your official stenographer and both Mr. Grossman and I have had copies. I do this in order that on the return of the writ of habeas corpus the Court may have before it the evidence upon which Your Excellency has acted.

The Governor: Yes, I think the whole record should go in.

Mr. Grossman: Well, if he is going to get in these papers upon the application for the original Executive warrant, then all of the letters and telegrams and correspondence should all go in.

The Governor: Yes, the entire record.

Mr. Kresel: In addition.

The Governor: Now it is understood of course that no further action on my part is necessary, because the warrant already has been issued.

Mr. Kresel: This was simply a motion to revoke, and as
399 I understand it, Your Honor denies the action upon my stipulation that we will have no hearing before Judge Mayer before the first of October, so as to give them any opportunity they want.

The Governor: Yes, sir.

Mr. Kresel: We thank Your Excellency.

The Governor: Gentlemen, the hearing is adjourned.

The following affidavit was offered in evidence by Mr. Grossman, and is herewith included as a part of this record:

STATE OF ILLINOIS,
County of Cook, ss:

Robert E. Cantwell being first duly sworn on oath states that on or about the 22nd day of August, A. D. 1916, he *say* Tommy Thomas, and on or about the 20th day of August, A. D. 1916, he *say* Clarence Glass, who this affiant knows to be the same persons whom it is reported are witnesses in the matter of Guy Biddinger. And this affiant talkes at length to the two parties in reference to the matter of the said Mr. Biddinger, and he was informed by both Mr. Thomas and Mr. Glass, that neither of them had appeared before the Grand Jury, in connection to, or in reference to,
400 or to testify in the matter of the said Guy Biddinger, and that they had not so testified, and that any representations that either of the parties had appeared before the Grand Jury were false. That he believed the said statements made by the said parties to be true, that they were made voluntarily by the said parties, Tommy Thomas and Clarence Clase. Further affiant sayeth not.

(Signed) ROBERT E. CANTWELL.

Subscribed and sworn to before me this 28th day of August, A. D. 1916.

(Signed) CHAS. TURGRIMSON,
[SEAL.] *Notary Public.*

The following record of a proceeding before Governor Dunne of Illinois was offered in evidence by Mr. Grossman, and is herewith included as a part of this record:

401 State of West Virginia,

Executive Department,

Charleston.

22" April, 1916.

My Dear Governor Dunne: A few days ago you signed papers directed to the Governor of the State of New York, for the extradition of Guy B. Biddinger, who is charged by a warrant issued before a justice of the peace, with the commission of certain offenses in Cook County. The purpose of this letter is to give you the facts in connection with West Virginia's interest in the matter.

A. Leo Weil, a prominent attorney of Pittsburgh, represents the Manufacturers Light & Heat Company, a corporation engaged in the production and marketing of natural gas, with large interests in West Virginia. In fact, its supply of gas is had almost entirely from this state. A controversy arose between this company and the Public Service Commission of this state over the rates to be charged domestic and industrial consumers. The gas company increased its rates and the Public Service Commission refused to alloe the increased rates to go into effect. From the decision of the
402 Public Service Commission Mr. Weil in behalf of his company appealed to the Federal Courts, one branch of the case is now pending in the District Court for the Northern District of West Virginia, and another branch in the Supreme Court of the United States.

In the bill of complaint filed by the company in the federal courts, Mr. Weil relied upon charges of executive interference to set aside and annul the order of the Public Service Commission. The Circuit Court of Appeals of the United States held that the proof had was not sufficient to establish executive interference, but further held that if such proof could be produced it would be the imperative duty of the court to set aside the order of the Public Service Commission. The whole matter was referred to a Commissioner for the purpose of taking further proof. In this connection Mr. A. Leo Weil attempted to reach two members of the Public Service Commission of West Virginia, through a man by the name of C. D. Elliott, an ex-Adjutant General of this state. Mr. Weil attempted also to use Guy B. Biddinger for the same purpose. When the matter reached a stage where Mr. Biddinger was convinced that Weil was attempting to have him commit the offense of bribery, he laid the whole matter before
403 the prosecuting attorney of Kanawha County, and upon the evidence of Mr. Biddinger, supported by a written statement of Mr. Weil, which we now have in our possession, over his own signature, Mr. Weil was indicted in the intermediate court of Kanawha

County, West Virginia, a court vested with criminal jurisdiction, of the offense of attempted bribery.

The indictment was returned in January, 1915. Soon after the grand jury returned the indictment Mr. Weil made application to the circuit court of Kanawha County for a writ of prohibition, to prohibit the intermediate court from proceeding with the trial, and his application alleged various reasons why no offense had been committed by him. The Circuit Court awarded the writ of prohibition, and from this action of the Court the State appealed to the Supreme court of Appeals of West Virginia, and that court by a unanimous opinion delivered last October, reversed the Circuit Court and held, in effect that if the State could prove the allegations of the indictment that Mr. Weil was guilty of attempting to bribe two members of the Public Service Commission. From this decision of the Su-
404 preme Court of Appeals, Mr. Weil made application to the Supreme Court of the United States for a writ of error and supersedeas, which was granted, an alleged federal question being involved. This case is now pending in the Supreme Court of the United States and the State of West Virginia is about ready to submit to said court a motion to dismiss the writ of error for want of jurisdiction. This motion will probably be heard during the next thirty days.

If the appeal is dismissed, as the State's attorneys confidently believe it will be, the case will be remanded to the Intermediate Court of Kanawha County for trial. Guy B. Biddinger is an important witness upon whom the State is compelled in a very large measure to rely for proof. Mr. Weil, realizing, no doubt, that Biddinger was a dangerous witness, undertook, as he admits in published statements in New York where he has been appearing to insist upon the extradition of Biddinger, to secure evidence in Cook County where Mr. Biddinger was formerly, if not now, connected with the Police Department, for the purpose of impeaching his testimony here, and se-
cured between twenty to thirty affidavits. These affidavits, I
405 am informed are made by parties who are notoriously known as ex-convicts, confidence men, pickpockets, et cetera. It was the statement contained in these affidavits which were obtained by Mr. Weil that was made the basis of the warrant sworn out for Biddinger in Cook County. No indictment was ever returned by the grand jury in Cook County, and I am informed, although not to such an extent that I can make the statement positively, that the grand Jury investigated the charges against Mr. Biddinger, none of which are less than five years old, and refused to return an indictment. It is my belief and in fact Mr. Weil publicly admits it to be true, that he is back of the charges instituted in Cook County against Mr. Biddinger, his purpose being to defend himself against him (Weil) in West Virginia.

I am not undertaking to say and would not be understood as saying that the charges against Mr. Biddinger instituted in Cook County are true or false, but I do not believe that they were instituted by the State of Illinois except at the instigation of Mr. Weil for the

406 purpose of serving him in his defense against charges pending in West Virginia. The authorities of Cook County were no doubt acting in good faith about the matter, but I believe they were not aware of the facts which prompted the prosecution and the interest Mr. Weil had in it.

What I would like to suggest to you, Governor Dunne, and in this I hope you will not feel that I am presumptious, is that you, for the time being, withdraw the requisition made upon Governor Whitman of New York, for Mr. Biddinger, and give to Mr. Biddinger a full hearing before Your Excellency as to whether or not the State of Illinois in good faith wants to extradite Mr. Biddinger.

All of the Statements made herein can be amplified by the Prosecuting attorney of Kanawha County, West Virginia, who will be glad to come to Springfield, if it is necessary, and acquaint you fully with the details of the entire matter. If the State of Illinois desires Mr. Biddinger for the purpose of prosecuting him for crime, I would not feel called upon in any way to protest, and when we are

407 through with him here as a witness and before he leaves the jurisdiction of this state, *is* that state wants him, I shall take it upon myself to see that he is delivered safely to the authorities there. I do feel, however, in view of the circumstances surrounding the application for requisition, that he should be granted a full hearing before you upon this question, and I hope that it will be your pleasure to extend to him this hearing.

Mr. Robert E. Cantwell of Chicago, whom no doubt you know, is familiar with the facts of the West Virginia case pending against Mr. Weil, and likewise is familiar with the charges pending against Mr. Biddinger in Cook County. I have been in touch with him indirectly and would appreciate it if you would allow him to lay the entire matter before you.

I do not want you to misunderstand my interest in this matter. The case pending against Mr. Weil is one of the greatest interest to the entire people of the state and I should regret very much to see anything done which would in any way interfere with this case, especially should I regret to see the State of Illinois proceed against Mr. Biddinger through the instrumentalities of A. Leo Weil,

407½ against whom, I believe there is a complete case in West Virginia, involving the dangerous offense to the public welfare of attempted to bribe state officials of high rank in carrying out their sworn obligations to protect the interest of the people.

I would very much appreciate whatever attention you may be able to give this matter, and inasmuch as Governor Whitman of the State of New York, has granted a re-hearing for Wednesday, April 26th, upon the question of whether or not your request for Biddinger should be honored, whatever action is taken should be prompt.

The propriety of granting to Mr. Biddinger a hearing which will bring out the facts is one, it seems to me, which addresses itself to you, rather than to Governor Whitman.

With hearty sentiments of good will and respect, and with apolo-

gies to you for being called upon to lay this matter before you to such a full extent, I am

Very truly yours,

(Signed) H. D. HATFIELD.

To His Excellency Honorable Edward F. Dunne, Springfield, Illinois.

408 STATE OF ILLINOIS,
County of Cook, ss:

Motion to Recall Requisition Heretofore Issued by the Governor of the State of Illinois Directed to the Governor of the State of New York.

Proceedings Had, Beginning at 11 o'clock A. M., Wednesday, April 25th, 1916, in Room 808, La Salle Hotel, Chicago, Before His Excellency Edward F. Dunne, Governor of the State of Illinois.

Present:

His Excellency, the Governor.

Robert E. Cantwell, Esq., and Morris Garfield Smith, Esq., Appearing on behalf of Guy B. Biddinger and also representing the Attorney General of West Virginia.

Maclay Hoyne, Esq., State's Attorney of Cook County, Illinois.

Frank Johnston, Jr., Esq., Assistant State's Attorney and Henry Berger, Esq., Assistant State's Attorney, Representing the People of the State of Illinois.

409 The Governor: This is a hearing upon a motion made on behalf of Guy B. Biddinger, to recall a requisition heretofore issued by me, directed to the Governor of the State of New York. The question involved is the extradition of Guy B. Biddinger.

Before proceeding with the hearing, I want to hand to counsel on both sides for their examination a letter of the Governor of West Virginia. You represent the State's Attorney, Mr. Johnston?

Mr. Johnston: Yes.

The Governor: I might state I received another telegram from the Governor of West Virginia, and I also received this telegram from Governor Whitman: (Reads) "Albany, N. Y., Ap'l 25-'16, 3:45 P. M. Hon. E. F. Dunn, Spd., Ill. Govr. Your telegram received. Will postpone final action upon the Biddinger matter until further advised by you.

CHAS. S. WHITMAN."

I also received this telegram from the Governor of West Virginia (Reads): "Charleston, W. Va. Apl. 25-16. 4:12 P. M. Hon. E. F. Dunne, Gov'r. Spd. Ill. Appreciate your courtesy in Biddinger matter. Would like to have district attorney from here present to represent State of W. Va., but he cannot reach

410 Chicago until late Wednesday. Could arrangement be made to postpone hearing until Thursday morning. Please wire immediately.

H. D. HATFIELD."

To which I answered in substance: "Gov. H. D. Hatfield, Charleston, West Virginia. As Biddinger is represented by two local counsel, will commence hearing tomorrow at 11, La Salle Hotel, Chicago, but will not finally dispose of matter until your district att'y is heard, either in Chicago or Springfield. Have your counsel come to Chicago first tomorrow.

E. F. DUNNE."

He will probably be here some time today.

Mr. Berger: Do I understand the record shows the appearance of Mr. Cantwell and Mr. Smith for Biddinger.

Mr. Cantwell: Yes.

The Governor: State your motion.

Mr. Cantwell: As Shakespeare says, "I can a tale unfold." I will ask permission to detail in narrative from the situation as I understand it.

Mr. Biddinger was a member of the Police Department. I am not going into the merits of this case or the question of the paper or any good or bad faith of any person connected with this matter in
411 the State of Illinois. The Statement I have to make is, of course, based on what information I have received from various sources.

Mr. Biddinger was upon the Chicago Police force in 1903. He was assigned to various duties and finally in 1911 W. J. Burns, who had a detective agency, was investigating the blowing up of the Los Angeles Times in Los Angeles, California, in which twenty-one persons were killed. These men were located, who were responsible for that disaster, and Captain Steven Woods of the Chicago Police Department at that time, was consulted by Mr. Burns, who asked him to assign two men who would be competent to perform such services as were required in this matter. At that time Captain Woods picked out two member of the Chicago Police Department, Guy Biddinger and William H. Reed. They were assigned to the work and given a furlough of some three months.

Some time in April, 1911, Mr. Biddinger personally made the arrest of J. B. McNamara, now serving a life sentence in San Quentin penitentiary, and also McGonigle, and Kirk Dykeman. They were arrested April 16, 1911, and brought to the State of California. Mr. Biddinger arrived there with his prisoner some where near the first of May and was in that vicinity some time thereafter.
412 He was engaged in that work, and in testifying and gathering other evidence, and it was necessary for him to get another furlough, which was granted for one year. Then it became necessary for him to have another furlough after that. So his furloughs continued on until some time in May, 1914.

During the interval that elapsed between the time he was de-ailed

upon this matter and his resignation in 1914, he was a continual resident of the City of Chicago publicly and openly, having two homes, one occupied by his mother and the other by his wife until some time in 1912.

He also made several arrests in Chicago, particular- in the Dutch Gentleman case. The records also show that on October 11, 1913, he was promoted to a first class detective sergeant in Chicago. The Book of Rules of the Police Department say- no one can be a member of the Police Department unless actually a resident of the City of Chicago.

During the administration just preceding the present one, there was an order issued that all furloughs be called in, and Mr. Biddinger was notified by Captain Halpin to that effect. His resignation followed some time after that.

Some time in 1914 there was a bill for divorce filed here that showed that his residence was in Chicago; and he has never abandoned his residence at any time. At no time had he concealed
413 himself, but was preminent in public matters throughout the United States, and it was well known that he was connected with the W. J. Burns Detective Agency.

In the course of that business and the reputation he had achieved in connection with such matters—Well, I will go back a little further. In New York one night, when he was having dinner with his wife at a hotel there, he received a telephone call from A. Leo Weil. He wanted to know if Biddinger would come over. Biddinger informed him that he couldn't go. He says, "You must come. Fix your own fees and I will give you five thousand dollars in addition to your fees."

The Governor: If he would go where?

Mr. Cantwell: To Pittsburgh. This was a telephone message on long distance at the Holland House, New York.

He consulted Mr. Burns and was advised to go to Pittsburgh, and arrived at Pittsburgh the morning following the conversation over the telephone.

The Governor: What date was that?

Mr. Cantwell: I don't remember those dates exactly, but it was before this occurrence in connection with Governor Hatfield. Before that Biddinger had been employed by Governor Hatfield and exposed some criminal operations in that state.

414 The Governor: Do you mean the alleged bribery of the public service commission?

Mr. Cantwell: No, entirely different matter. Mr. Weil, knowing that he had been employed by Governor Hatfield, wanted to get him to go back there. Preceding this—and I have this from the Prosecuting Attorney of Kanawha County, West Virginia—they have there a Board similar to our Public Utility Commission, and they have wonderful power; they have power to make laws, even; in fact, more power, probably, than any similar body in the world.

West Virginia, by the way, is the only state in the Union where you don't have to pay taxes. They so handle their resources that the people in a measure get certain benefits from them. Among the

wonderful wealth of the State of West Virginia is their natural gas which is supplied to Pittsburgh and practically operates the great industries there. The State of West Virginia passed a law fixing a price that the consumer should pay for that product.

Mr. Weil said the Legislature did not have authority to fix the price of any product of West Virginia. The Public Utilities Commission of that state took the matter up and told Mr. Weil
415 that unless he complied with the provisions of the Act of the State of West Virginia there would be no more gas furnished,—which would be almost a calamity to the City of Pittsburgh. He then began a fight and appeared before this Public Utilities Board, consisting of six members only one of whom was a lawyer. He made the usual fight that a lawyer makes before such a body for his client, and he knew the Governor was opposed to him.

The Governor of West Virginia is a very wonderful man. For instance, he is a physician and performs wonderful surgical operations for the poor people, miners, etc.

The Governor: The present governor?

Mr. Cantwell: Yes. He is very, very popular.

This Commission after the hearing decided that no more natural gas would be furnished to the City of Pittsburgh, or rather to this corporation that Weil represented in Pittsburgh. When the meeting was called it was a sort of an informal meeting, held in a room hardly larger than this. The meeting being adjourned and not being held in a public court room of any kind, all the parties that took part in the meeting mingled.

The Governor: You mean the Commissioners?

416 Mr. Cantwell: Yes, the Commissioners.

Governor Hatfield—Either his brother-in-law, or some relative by marriage, was a member of this Commission, and another commissioner, whose names will be repeated by the Attorney General of the State of West Virginia,—got thrown together with Weil, and in an apologetic manner this relative of the Governor said, to Mr. Weil, "We are very sorry. You are right, but the Governor says to do this."

He, very shortly afterwards made a public statement. There was one paper in West Virginia that was against the Governor. They made the statement. The authorities that had that matter in charge immediately cited Mr. Weil in. In West Virginia if a charge is made against you, you may demur to it. Mr. Weil appealed from that order and took it to the Supreme Court of West Virginia. The Supreme Court unanimously decided against him, and it was then taken to the United States Supreme Court on some Federal question, where it is still pending. Right after that appeal had been taken was the time Mr. Weil sent to New York for Biddinger. The Burns Detective Agency owns what is known as a detectophone, different from a Dictagraph, which requires the services of an A-1
417 court reporter. I don't quite understand it, but I understand the only people that have it are the Burns people. Biddinger brought those operatives with him, and Mr. Weil said, "I want you

to go down. I have attanged General Elliott, an adjutant general of the State of West Virginia, and I have arranged with him to have a conversation with two members of the Utilities Commission. I want you to get that conversation. In addition to your charges I will personally present you with five thousand dollars for your services." He was introduced to General Elliott and in the presence of General Elliott this proposition was made.

General Elliott said to Mr. Weil, he asked, "Is this A. Leo Weil?" He said, "Yes." Elliott said, "I can't get these men to do this"—meaning the members of the Commission—"unless you take care of them. One has a term of office lasting four years at six thousand dollars a year, and the other five years at six thousand dollars a year." Weil said, then, "You tell them if they lose their jobs, I will reimburse them." Mr. Biddinger withdrew. They went down to Charleston, West Virginia to operate the detectophone, Mr. Biddinger having done work for Governor Hatfield, and the Governor having the greatest confidence in him. When they

418 got down to this room it seems that the plan as the discussion developed was that these two men wanted to "deliver the goods" for the amount of money to be delivered to them, but they didn't want to say so in so many words, they didn't want it to appear that way, but if some scheme could be brought about whereby they could say they were jobbed, they would do it. When he had this detectophone on, it came so clear—as clear as if each person had talked right into the detectophone—that he became suspicious, and he immediately, being experienced in that line of work, saw that Governor Hatfield was being conspired against. So he and the detectives took their machine and went back to make their report to Weil. Weil wanted him to turn them over, but he said he didn't want to until he consulted with his chief, Mr. Burns.

General Elliott is a very wonderful man, with a black mustache and the harness all around, who makes as if to hand you a cigar and pulls a big blue steel gun. He had this conversation with Elliott and Weil, and Elliott apparently became very much excited and rushed out of the room. Weil said, "You had better go after him, he is going to get his gun."

The Governor: Said to who?

419 Mr. Cantwell: Said to Biddinger. So they followed him over to where these Burns operatives were, and they talked with him, and they finally got him to return, and they continued the conversation. So they went back, and Weil said, "Now, General, you lost your head. I didn't intend to double cross anybody." "Well," he said, "You son-of-a-bitch, you can't put me in the position of double crossing my friends in West Virginia." "I will settle my own matters down there; I will attend to my own matters in West Virginia."

Weil said to General Elliott, "Here is the proposition I will make to you. We don't want to give these two men five hundred dollars a month for a period of five years. Can't we get them to take a lump sum?" Elliott said, "Why didn't you say that?" He said, "I did try to say it, but you got mad too quick. You go back to West Vir-

ginia and make arrangements. If you can I want to clear the matter up right now."

Biddinger went back on the train and it happened that this brother of the Governor was there, or this relation, and when they got to investigating these various matters this Governor's relative
420 thought they were going down to double cross him, and the race to get to the Governor first began, to tell the whole story, and the Governor's relative won.

In the meantime Biddinger was called out of the city by his boss, W. J. Burns, and went back to New York. The grand jury was impaneled, as the Governor states in his letter, and an investigation was made, but they couldn't find Weil and it was either Biddinger or Elliott, Elliott refusing to say a word. They came on to New York and saw Biddinger. They said, "You will either come back or we will indict you. You are not the man we want. We want the man who corrupted the main officials in our state."

While Biddinger was there a banker came from Chicago and said, "I will give you thirty thousand dollars and a thousand dollars a month"—a prominent banker——

The Governor: Who is the prominent banker?

Mr. Cantwell: Mr. Greenebaum.

The Governor: Which one of the Greenebaums?

Mr. Cantwell: I don't know. The records of this matter will show that he appears further in other matters. He was to go to Australia or some other place while the statute ran.

The Governor: Who was to go?

421 Mr. Cantwell: Biddinger was to go, if he accepted this money.

The Governor: Who was offering the money to Biddinger?

Mr. Cantwell: Greenebaum, saying he represented Weil of Pittsburgh.

The Governor: How much money was he offering?

Mr. Cantwell: Thirty thousand dollars and a thousand dollars a month to stay until the statute should run—out of the jurisdiction of West Virginia.

They forced Burns and Biddinger to go to West Virginia where they appeared before the Grand Jury. After Biddinger offered as proof letters, etcetera, General Elliott made a clean breast. As a result the Grand Jury returned an indictment and Mr. Weil then demurred and took an appeal from that to the Supreme Court of West Virginia, which decided adversely to him, and then the Federal question was raised, and the matter went to the United States Supreme Court. And as Governor Hatfield said some motion was to be made before the Supreme Court just prior to this requisition for Biddinger's extradition from Illinois—that the Supreme Court would hand down their opinion or dismiss the petition, or something to that effect. The Attorney General will probably have
422 copies of those proceedings with him.

The case was about to be reached, as I say. About this time Barney Bertsche's letters began to appear in the Chicago Daily News. In those letters he made frequent reference to a Sergeant B.

That information was communicated to Weil. Mr. Bertsche then returned to Pittsburgh, which was his former home, and was then engaged by Weil to collect information against Biddinger. He returned then to Pittsburgh, and shortly after his return he appeared in New York and publicly everywhere stated that he was going to kill this "big stiff" on sight.

The Governor: Referring to whom?

Mr. Cantwell: Referring to Biddinger. That the State's Attorney of Cook County was going to indict him; that he would be brought back. I don't believe Bertsche knew about the West Virginia deal. But he wrote to me and asked me to look up—Mr. Biddinger—to look up and see if there were any proceedings pending against him in Cook County. I inquired of various people, one of them Clarence Class, and various other persons that knew about it. They said the State's Attorney had not called on them, but if he did they would do whatever he wanted. They wouldn't give me any further information. It seems these charges were filed before Judge Hop-
423 kins, and the first thing we knew about it was that Your Excellency had honored the requisition on the Governor of New York. Biddinger was arrested, put in jail, released on habeas corpus and bail in iron in thirty thousand dollars was furnished. Shortly after that the Governor of West Virginia was notified, and I requested the Governor to look into the matter, and I informed the Governor that if Biddinger was taken to Illinois, that would defeat the prosecution of the case because, like our four-term law, Weil will now be entitled to immediate trial.

I informed the Governor that I believed, in view of the fact that they had attempted to bribe Biddinger, and in view of the fact that they had threatened him before the bribe was offered, that if he was kept out of West Virginia the connection could not be made.

Then I stated if Biddinger was taken to Illinois and put under bond it would be impossible for him to be in West Virginia. On the other hand there might be some delay; if the case was prosecuted and tried in the proper manner it might take more time than was figured on. There are other things, delays and dilatory tactics that might be employed, so that I could not know when a trial would be had. I talked with Governor Hatfield and the Prosecuting Attorney,
424 and he told me he was known personally to Your Honor.

The Governor: We governors get acquainted in the Governors' Conference.

Mr. Cantwell: And he said he was satisfied that in your acquaintance with him you would have confidence in any statement made by him, that it was in good faith. He said that if Your Excellency would withdraw your requisition on the Governor of New York pending the prosecution of this case, he would hold Biddinger in West Virginia and deliver him safely to Your Excellency.

Without going into the merits of the case, all the incidents being barred on their face, on account of the statute of limitations, I will refer to one case in which it was alleged that the offence was committed on the 1st day of May, 1911, on a man that kept a saloon on the corner of Clark and Madison Streets; that he was induced by

Biddinger to put a thousand dollars in his pocket to pay on a fight which took place in Waukegan or Racine, and that fight, the records show took place in 1908, three years before that.

The Governor: Three years before that.

Mr. Cantwell: And that Biddinger was to put this thousand dollars—that Quinn, that was the man's name, was to put this
425 thousand dollars in his pocket and go to the fight, and that Biddinger was to secure the services of some pickpocket who was to pick his pockets and he would be in on the split-up. At that time Biddinger had just delivered his prisoners to the authorities in California, and had gone to Santa Catalina Island fishing, and he caught a fish, and he had a picture taken of it. Here is the picture. (Hands Governor photograph.) This is Biddinger here. (Indicating.)

I have secured a copy of the affidavit made by Mr. Quinn, which is as follows: (Reads.)

"STATE OF ILLINOIS,
County of Cook, ss:

William Quinn, being first duly sworn, on oath states that he is a resident of Chicago, Cook County, Illinois, that he was and still is engaged in the saloon business at 31st and Calumet Av., that he knows Guy Biddinger, formerly detective sergeant of police of the City of Chicago, that, however, on the 15th day of November, 1908, he did not arrange with said Guy Biddinger, or at any other
426 time make such arrangement to go to a prize fight at Waukegan, Illinois, that this affiant never at any time while he was in the company of Guy Biddinger talking to the said Guy Biddinger have his pockets picked, in which said pocket book there was the sum of fifty dollars ($50), nor did he have his pocket picked under such circumstances of any pocket book, or of any sum of money whatsoever.

Further affiant sayeth that if anyone has sworn to an affidavit stating that he, this affiant, had his pocket picked, in 1908 or at any other time while he was in the company of Guy Biddinger, or that he, this affiant, went to Waukegan to see a prize fight, or made arrangements to go with said Guy Biddinger, or that this affiant's pocket book was picked, or that he lost a pocket book with fifty dollars or any other sum, under such circumstances, the person signing the said affidavit is swearing to a falsehood, and something untrue in each and every material fact.

(Signed) WILLIAM W. QUINN.

Subscribed and sworn to this 24th day of April, A. D. 1916.

(Signed) FOREST GARFIELD SMITH,
[SEAL.] *Notary Public.*"

427 Mr. Cantwell: In addition to that, Mr. Quinn said to me that he had boasted of the fact that nobody could steal his purse, and that his purse was taken as a joke, containing no money

but having some picture of his wife, which he still has in his possession—that it was taken as a joke, and was returned to him. He says that coming back from Waukegan the fellows with him twitted him about it, and he denied that he had lost his purse, but subsequently, the purse containing a picture of his wife, he admitted it, and then got it back.

With that statement I will say that I am designated by the Governor as the representative of West Virginia only to make this request on Your Honor: That if you withdraw your requisition until after this matter is disposed of in West Virginia, he will agree jurisdiction of Biddinger, even if it is necessary to put him under bond.

The Governor: Biddinger is in New York.

Mr. Cantwell: Yes, he is in New York.—And he will safely return him to Illinois. That is the purpose, if Your Excellency please, of appearing before you. He asks you to recall your requisition in order that he may dispose of this charge against this man, Weil, who has committed an offense that is very serious, the bribery of
428 some men of high rank in the State of West Virginia, the people of that state being deeply interested in the matter. The people of that state are greatly interested, and they merely ask you if you will extend the courtesy between governors for that purpose, until that matter is prosecuted in West Virginia, when Mr. Biddinger will come back here.

The Governor: Do any of you gentlemen wish to say anything?

Mr. Hoyne: I want to reply very briefly.

In the first place, the request made by Mr. Cantwell is an extraordinary one. We have handled this matter up to this time in the ordinary way. Application was made to us to go before the Grand Jury with the case, and the affidavits were submitted to us. We declined to do that, and said, "Swear out your warrant in the ordinary manner. This is not an extraordinary case. Swear out your warrant."

I do not understand from our dealings with the Governor's office here that it has been your practice to go beyond the face of the record as made by the application. In fact that is the way we handled some matters in Michigan, and I think we had a hearing before you.

The Governor: I always, when application is made and a hearing sought I always, upon request, grant a hearing.

429 Mr. Hoyne: I have seen the statement made in the papers that the Governor was said to say that the Grand Jury has passed on this matter, and declined to return an indictment. That is not true. We declined to present the evidence before the Grand Jury at any previous session.

And the statement that Mr. Biddinger is a resident of Illinois, and they are barred——

The Governor: Until what time?

Mr. Cantwell: The records of the Police Department will show that he was promoted to first class detective October 11, 1913.

Mr. Hoyne: If he is correct in that, Mr. Biddinger will not be harmed, and I think it would be strange for the Governor of this state to interfere with some local prosecution in order that some other

proceeding in some other state should be effected. Here is a telegram from the clerk of the Supreme Court. (Reads:) "Washington, D. C., April 26, 1916. Maclay Hoyne, State's Attorney.

Case of A. Leo Weil against Black and State of West Virginia pending and undetermined in this court. Nothing has been done but file transcript of record and docket case."

I think you will admit that however confident the Governor
430 may be in his expectation, neither the Governor nor anyone else can tell when there will be a final decision, in view of that statement of the clerk.

Whether Mr. Biddinger is a resident of Illinois or New York, I don't see what difference it would make if he comes here. I think the request should be denied.

Mr. Johnston: If Your Honor please, in the first instance, it seems to me this application on the part of the Governor of West Virginia is a most extraordinary one, a most unreasonable one, and wholly inadequate and insufficient to justify the revocation of the warrant on Your Honor's part.

If you will, just for a moment, analyze the reasons assigned for the request I think you will at on-e see that no such condition would warrant Your Honor in revoking this requisition in order that Biddinger might be sent to West Virginia, whether indefinitely or——

Mr. Cantwell: If I may interrupt,—the Governor of West Virginia says, "This case is now pending in the Supreme Court of the United States, and this office will make a motion, and this motion will probably be heard within the next thirty days."

Mr. Johnston: Why should it be necessary to revoke the
431 warrant issued by Your Honor, in order that Biddinger may go to West Virginia to testify against Leo Weil in a case which will arise at some indefinite time? Why could not the ends of justice be subserved by having the matter remain as it is, have Biddinger brought back to Illinois, and if at any time in the future a prosecution or trial is conducted against Leo Weil, the question of letting Biddinger go back to testify as a witness can be considered then. But why is it necessary for the warrant to be revoked now in order that Biddinger may be a witness in some case in West Virginia against Leo Weil? How does the revocation of the warrant affect that question? Biddinger can be a witness in that case just as well if the warrant issues and he is returned here as he could with the revocation of the warrant. I say that with the slightest reflection and consideration of the reasons assigned by the Governor of West Virginia, it is perfectly apparent that that is not the real, substantial reason for the request.

The Governor: What do you claim is the reason?

Mr. Johnston: Well, I cannot point affirmatively to the reason.

The Governor: Here is an application from the Governor of a sovereign state, and under the comity that prevails between
432 states, I have got to assume that the request is made in good faith, for the purpose of furthering the ends of justice. I want to go to the bottom of this whole thing.

Mr. Johnston: But Your Honor can consider, of course, the rea-

sons which he assigns and determine in your own mind whether those reasons are adequate and sufficient to justify you in revoking the warrant which you had previously issued, which this reason can not be, on the face of it,—for this extraordinary and unusual request.

The Governor: I can see one reason, however, that is very apparent. This man, the Governor claims, is a prosecuting witness in a proceeding now being carried on in the State of West Virginia. If he is indicted and tried his reputation is smirched, when he appears as a witness.

Mr. Johnston: If his reputation could be smirched—if he is a disreputable character, it should be done. Just for a moment consider. Here is a man of unquestioned reputation and integrity, being of unsullied reputation in Pittsburgh. If that man's reputation is being blackened by a criminal, a man who can be shown to be a criminal, I submit it would be a gross injustice to allow it to be done.

The Governor: Who brought these proceedings to your attention?

433 Mr. Johnston: These affidavits on which this case is based were sworn out by Shelby Singleton of the Citizens' Association, another man of unquestioned reputation.

Mr. Hoyne: I can answer that question. The first time this matter came to my attention was when Mr. Weil came to me accompanied by Mr. Austrian and Mr. Lessing Rosen*e*nthal.

Mr. Cantwell: Mr. Weil was one of the men who brought the matter to your attention.

Mr. Hoyne: Yes. I never heard of them before. They wanted this matter brought to the attention of the Grand Jury and I said "We don't handle those matters that way."

Mr. Johnston: Those affidavits were sworn to by Mr. Singleton.

Mr. Cantwell: All on information and belief.

Mr. Johnston: Yes, but Mr. Singleton stands in this community as a man of unimpeachable integrity and reputation, and the presumption must be indulged in that he made an investigation before he would sign such affidavits, even on information and belief. Certainly he would not do it recklessly.

So, there stands an affidavit supported by one of the most reputable men in this community, on its face regular and proper, and,

434 as Mr. Hoyne has said, Your Honor has uniformly adhered to the rule *that* where these proceedings are regular on their face, and has even absolutely refused to make any inquiries into extraneous collateral facts. I think that is the established and uniform rule.

The Governor: The established rule is always to give a hearing upon an application for extradition.

Mr. Johnston: Made by reputable citizens and with the assurance that the proceeding is in good faith, and regular. Your Honor has been firm and steadfast in that policy, as Mr. Hoyne has given an instance of in our own particular office, where a hearing was had on demand, a request from Michigan relative to two officers in the detective bureau charged with an offence in Michigan. Our office attempted to show Your Honor that proceeding was one growing purely out of politics, and not in good faith. Your Honor stated, "That

may be true, but I cannot, under the rules well established and uniformly followed — control-ing executives, go into those matters.

Mr. Cantwell: I contend that the papers are not regular upon their face.

The Governor: You have not discussed that yet.

Mr. Johnston: I will repeat again that the general rule is that these extraneous and collateral matters cannot be inquired
435 into. The elements on which the request is founded on the face of the proceedings, may be inquired into. But outside of that, I think the discretion of Your Honor extends no further.

But for your satisfaction I would like to call your attention to a letter written by Biddinger, showing unquestionably by his own admission that he had renounced his citizenship in the City of Chicago. Here is a letter dated January 13, 1912, in which he states: "I ought to explain to you that I never intend to live in Chicago again, or with you or any other woman. So you can make your plans and do what you think is best."

Mr. Cantwell: Written to his wife in a divorce case. After that he made arrests in the City of Chicago.

Mr. Berger: Here is a letter under date of 1914 where he says he has not done any police work in four years.

Mr. Johnston: If Your Honor will permit me I will read this last letter into the record. (Reads:)

"New York, January 25, 1914.

Mr. James Gleason, General Superintendent, Police Department, Chicago, Illinois.

DEAR SIR: I herewith tender you my resignation to take
436 effect immediately in view of the fact that I have been actively engaged in no police work in the City of Chicago for the past four years and am probably keeping some good man out of a promotion. I therefore think it is best that I should resign, and trust you will accept this resignation immediately upon receipt of same.

Thanking you for many past favors received at your hands, I am

Very truly Yours,

GUY BIDDINGER."

Below this:

"January 26th, 1914—I hereby accept the resignation of Guy Biddinger as first class detective sergeant, Department of Police of Chicago, to take effect on this date, January 26th, 1914.

JAMES GLEASON."

The Governor: Was it the practice to give a furlough?

Mr. Johnston: I understand they did.

Mr. Cantwell: The City of Chicago was paid by Mr. Burns for his services.

Mr. Johnston: That matter was brought about by Captain Halpin's letter to him.

Many of the statements made by Mr. Cantwell this morn-
437 ing are impossible of proof. We deny that A. Leo Weil was guilty. We claim that Biddinger was acting for two parties. In plain language he was a double crosser, that he was acting for the Governor of West Virginia, trying to get what the Governor of West Virginia wanted—and that this he attempted by an outrageous slander of a man of unsullied reputation. Of course, that is not directly involved here, but I want to state that in answer to Mr. Cantwell's statement.

I want to direct Your Honor's attention to one statement in the letter of the Governor of West Virginia to Your Honor. In that letter it is stated that the Governor had been informed that this matter was presented to the Grand Jury in Cook County——

The Governor: No, Mr. Hoyne covered that. When Weil and Singleton and Alfred Austrian came to him, that he told them he would not place it before the Grand Jury, for them to swear out their warrants in the usual manner.

What are these charges in Illinois felonies or misdemeanors?

Mr. Johnston: Both.

Now, Your Honor has issued a requisition on papers that undoubtedly are regular on their face. Affidavits have been
438 signed by Shelby Singleton, a man of unquestioned reputation in this community.

The Governor: Made on information and belief.

Mr. Johnston: But he has got information and belief.

The Governor: It is on information and belief, however.

Mr. Berger: The complaints upon which the extradition proceedings are based are not on information and belief, but by persons having knowledge of the fact.

The Governor: Who swears to the complaint before the Municipal Judge?

Mr. Berger: Singleton.

The Governor: What did he swear to,—just upon information and belief. In other words, had Mr. Shelby M. Singleton any personal knowledge of the commission of the alleged crime?

Mr. Johnston: I judge not. But he has made sufficient investigations in justifying him in believing that the facts and circumstances he relates are true and correct, and sufficiently authentic to justify him in making this affidavit.

Now, Your Honor is asked to recall that warrant, issued in all respects regularly. There is no claim here that there was anything irregular in the issuance of the warrant, but the single ground
439 for the motion is that the Governor wants to use Biddinger as a witness in the prosecution which he says has been committed against Weil. Now, how can the revocation of this warrant assist in using Biddinger as a witness. In only one way and that was suggested by Your Honor, and that is by saving him from the stigma of an impeachment by a conviction. I doubt very much whether in West Virginia it could be shown that Biddinger was indicted. I think there must be a conviction of an infamous offence, and it can

be shown only by the record, not by parole. That is the rule here and I presume the same rule obtains in West Virginia.

The Governor: What was the date of the alleged crime?

Mr. Johnston: 1908, 1909 and 1911.

Mr. Cantwell: Here is the complaint that Singleton swears to, and they are all alike: "This complainant is informed and believes, etc. that the said Biddinger is guilty", etc.

Mr. Johnston: Suppose that Biddinger is actually guilty of the offence charged against him? Why should the Governor of West Virginia or any other fair man who is searching for the truth, want to have that fact concealed at the trial of Leo Weil when Biddinger goes on the stand? I am saying now that Biddinger is guilty
439½ of an infamous offence, and that will be shown in West Virginia. Why should the Governor of West Virginia want to conceal that, if he is fair and honest. In other words, if Guy Biddinger goes before that Jury in West Virginia as a witness sheltered and protected by the Governor of West Virginia, by inducing Your Honor to revoke this warrant and appears before that jury in West Virginia as an honest citizen, when, in fact, he is a despicable criminal, why it would be a deception of the jury of West Virginia. A citizen who has gained his reputation by a great number of years of the practice of virtue should not be placed on a parity with a crook or a criminal who has been a habitual offender against the law. That would be the case if Guy Biddinger was allowed to go before them and testify as an honorable citizen.

The Governor: Both of them are charged with being criminals in this record. I say by one aspect Guy Biddinger. If he is a criminal he should not be allowed to appear as an honest citizen when he goes before the jury in West Virginia. If he is not a criminal, let him come before a jury here, and *he* cleared and have a clean record when he appears as a witness before the jury of West Virginia.

It looks to me on the face of this request, as though there
440 was an effort on the part of the Governor of West Virginia to shield and protect Biddinger. If Biddinger is innocent let him face the charges and have his innocence proven. Unless there is a fear or doubt or else a conviction of his guilt on the part of the West Virginia authorities and they do not want to have it discovered before they can use him as a witness? Is that fair? Is that in accordance with justice and equity?

Take the other view. Suppose Biddinger is an innocent man and not guilty of these charges for which the warrant is issued, and suppose he is really wanted in good faith in West Virginia to testify on the trial of Weil? Can that be accomplished without the revocation of this warrant? Why should we let him *to* free in this state, without trial of this controversy, because he is going to be a witness there? Is it not in accordance with good policy to hold him here? If he is wanted as a witness in West Virginia, let him be used as a witness in West Virginia in that case. In other words, why should he be held relieved from the charges here and allowed to go free simply because he is wanted as a witness in West Virginia? That can be accomplished without any revocation of the warrant, unless it can

be shown clearly to Your Honor that the proceeding in West
441 Virginia will be vitally affected without a revocation of this warrant. If it can't be, all right, but if it can be accomplished without disturbing the *statute* quo it should be allowed to remain. I say it is for the movers in this matter to show Your Honor in some way that the proceedings in West Virginia against Weil would be injured by not revoking this warrant. But that cannot be done. There is no way on earth to establish that conclusion, that those proceedings cannot be tried and tried satisfactorily with this warrant pending here. And, furthermore, it would be every easy for the State of Illinois to permit Biddinger to leave the state with this warrant remaining as it is, to send him in custody of somebody, if necessary, to go down there and testify in that case. In other words, the ends of justice can be subserved better in both the states of West Virginia and Illinois by allowing this warrant to stand. I repeat, in conclusion, it cannot be shown satisfactorily to Your Honor that the revocation of this warrant is necessary in order for Biddinger to be a witness in West Virginia.

The Governor: Have you heard from the District Attorney?

Mr. Cantwell: Only what communication was sent to Your Honor.

The Governor: I will notify you, gentlemen, when he ap-
442 pears. I telegraphed him to come to Chicago first, but if I can dispose of it this afternoon, I want to do it.

Mr. Johnston: This picture of the fish in California is dated May 1, 1911, and the time book of policemen on May 1, 1911, shows the answered roll call here every day in that month.

Mr. Cantwell: Somebody answered for him, if he did.

Mr. Johnston: Showing what the documentary evidence purports to indicate.

The Governor: Does any one of you gentlemen appear for the State of West Virginia?

Mr. Cantwell: The Governor asked me to represent him and present for him to Your Honor some letter that he—There was a letter directed to Your Honor which he sent me a copy of. The Governor of West Virginia asked me to present the situation to you.

The Governor: Proceed.

Mr. Smith: I want to say this: First of all, as to Mr. Singleton. Nobody is attacking Mr. Singleton. There is no effort to involve him at all, but the affidavit here in this record is about a man that Mr. Singleton complains of in 1911, who was going to a certain prize fight, and had his pockets picked.

443 Mr. Berger: The affidavit does not allege that that larceny that Biddinger took part in took place on May 1st, 1911. The affidavit expressly states it was in 1908.

The Governor: Then you are claiming that they are all barred by the statute?

Mr. Smith: Yes.

The Governor: Eighteen months for misdemeanors and three years for felonies.

Mr. Berger: And there is a 1911 offence charged, permitted the escape of a prisoner he had in custody.

Mr. Smith: All these statements are made upon information and belief. The State's Attorney was approached by Mr. Weil first, in company with several attorneys here. Mr. Weil made the first application.

Mr. Hoyne: Austrian came with him first, and then was accompanied by Mr. Lessing Rosenthal.

Mr. Smith: The purpose for which Weil is seeking the prosecution must be very apparent.

Supposing this proceeding was carried on. Supposing Your Honor did not want to go into the question of statute of limitations, whether it ran or not? I take it it would be futile to bring a man here if he immediately would be discharged. It would be very futile and expensive for this county to bring a man back
444 here for the purpose of trying a man on those old offences. There would be fifty-one complaints for which he would be required to give fifty-one separate bonds. He, being now a resident of New York, and being a witness in this matter in West Virginia, the bondsmen he would have on all those bonds would be necessarily a professional bondsman. When the matter came up in West Virginia, the State's Attorney would suggest that they send him back there in the custody of somebody. If he is on bond they have no right to attempt to send him back in the custody of anyone. If he was to attempt to cross the state line he would have fifty-one bondsmen there to arrest him. It would be impossible with fifty-one bondsmen over his head for him to attempt to go to the State of West Virginia. If we attempted to try those fifty-one cases, it would take months and months to try them. In the mean time the State of West Virginia matter would have been determined in the Supreme Court. If it is remanded for trial, it will be tried down there, and if Biddinger is an important witness he would be here and could not go out of the state. The State of West Virginia could not try that matter within sixty days, I do not believe, and if he was brought here, he would not be permitted to testify there. The matter
445 of extradition is a matter of comity between state and state, between governor and governor. Here is a situation where three states want something; here is a matter of comity between three states. It has been stated here, I take it, that New York wants this man. New York has no interest in him. The State of Illinois desires him and the State of West Virginia desires him. The state of West Virginia says, "If you will turn him over to us so we can proceed with our prosecution of a man, we will turn him over to you afterwards." Here is a matter of comity between the governors or between the States of West Virginia and Illinois. West Virginia says, "If you will——" you might say "—loan us this man, we will see that the State of Illinois gets this man back." These matters occurred in 1908, that was eight years ago. Now the State of West Virginia says, "We want him immediately. This matter is a new one. Let us prosecute this man, and we will do the best we can to see that the State of Illinois gets him back." In other words the State of Illinois is not being deprived of any rights, and is merely subserving the ends of justice by giving to the State of

West Virginia an opportunity to use the testimony of this particular man.

The Governor: I will notify you gentlemen—and will you
446 notify Mr. Roberts, Mr. Johnston?

Mr. Johnston: Yes, Your Honor.

And thereupon the further hearing of said matter was continued subject to call.

447 In re BIDDINGER.

10 o'clock a. m., April 27, 1916.

Parties met pursuant to adjournment in Room 808, La Salle Hotel, Chicago.

Present as before, and T. C. Townsend, Esq., Prosecuting Attorney of Kanawha County, W. Va.

The Governor: Well, gentlemen, if you are ready we can go right along.

Mr. Townsend: If the Governor please.

The Governor: Mr. Townsend.

Mr. Townsend: I desire to thank the Governor for his courtesy extended in allowing me to appear here in this matter and also to express to the Governor the thanks of the Governor of West Virginia for the courtesy extended.

In the beginning, we want to say, Governor, that we are not interested in any way as to the merits or demerits of the alleged charges pending against Mr. Biddinger in the State of Illinois. We have nothing to do with that matter. We decline to place ourselves in the position of having anything to do with it. If Mr. Biddinger has committed the offences with which he is charged in this state by complaint in the warrant, and if he is regularly indicted
448 by the Grand Jury——

The Governor: He has not been indicted. There were fifty-one charges by complaint before a Municipal Judge here.

Mr. Townsend: —he should be brought to justice, and the State of West Virginia would be the last state in the world to protest against the trial of a man upon charges brought against him in good faith.

Our interest in this case is in connection with Mr. Weil. We feel that Mr. Weil of Pittsburgh, who is represented here today, I believe, is responsible *of* the charges being brought against Mr. Biddinger in the State of Illinois, and we therefore feel that the State of Illinois is being made an instrument, and being used for the purpose of making Mr. Weil's offense,—making Mr. Weil's defence against a serious charge in the State of West Virginia. It might be well that I review to some extent, that you may thoroughly understand our situation, the charges against Mr. Weil in the State of West Virginia.

We have in that state a Public Service Commission.

The Governor: Corresponding to our Public Utilities Commission?

Mr. Townsend: Yes. At that time consisting of four members; now consisting of three, being changed at the last session of the Legislature.

449

The Manufacturers Light & Heat Company is a large producer of natural gas, getting the greater portion of its supply from the State of West Virginia, and supplying domestic and industrial consumers in the State of West Virginia and beyond the state,—Pennsylvania and elsewhere.

That company attempted to increase its rates to domestic and industrial consumers of gas. The Public Service Commission of West Virginia refused to allow the company to increase its rate—I am not sure that this statement is correct, but I believe it is—and that instead of allowing the company to increase its rates, it actually, upon a hearing, reduced the rate.

Mr. Weil, representing his company, filed an appeal in the District Court of the Northern District of West Virginia, enjoining the Commission from interfering with the company in its attempt to increase its rate, and in that appeal charged executive interference. In other words, he charged that the opinion of the Commission, which required the company to reduce its rate, was in fact not the opinion of the Commission, but that it had been influenced, that the opinion had been the result of the domination and the influence of the Governor of the state.

450

Now, upon the hearing of an application for a temporary restraining order under the Federal Statute, as you are aware, where a state law in involved, a district court must call in two other judges. Judge Dayton called in to the case Judge Woods and Judge Pritchard.

The Governor: All state judges?

Mr. Townsend: No, all Federal judges,—pending in the Federal court.

The Governor: Yes.

Mr. Townsend: The three together decided the case adversely to the interests of Mr. Weil and his client, but in the opinion held that if it could be shown that the Governor had interfered with the Public Service Commission in the discharge of its official duties, and had in effect dominated the Commission in rendering its opinion, that it would be the imperative duty of the court to set aside the order, because the company would then have been denied due process of law. When that opinion was handed down, then application was made to the District Court to refer the whole matter to a Commissioner to take evidence. Another branch of it went to the Supreme Court of the United States.

When the motion was made in Parkersburg, West Virginia, to refer the matter to a Commissioner to take evidence upon the question of whether or not the Governor had interfered with the Commission in the discharge of its duties—Prior to that Mr. Weil had been busy in the State of West Virginia attempting to secure evidence to the effect that the Governor had interfered

451

with the Commission, and in connection with his attempt to secure evidence had employed Mr. Biddinger. I understand Mr. Biddinger told him at the time he employed him that he was doing certain work for the State of West Virginia, and the Burns Agency told him they were doing certain work for the State of West Virginia, but the two would not conflict.

Mr. Biddinger came down to Charleston, and got in touch with a man by the name of Elliott, and two together respectively at Charleston and Huntington got two members of the Public Service Commission in a room and got them to talk. While they were in those rooms certain propositions were made to them, that if they would go into the courts and testify to the "truth" as they called it, that the Governor of the State of West Virginia influenced them in the opinion that was rendered, which, of course, would be just the evidence that Mr. Weil wanted to set aside the commission in pursuance
452 and in accordance with this opinion rendered by the Circuit Court of Appeals. I am not attempting to go into all details of this matter, but just to give Your Excellency a skeleton of the situation as it exists.

I knew Mr. Biddinger, had known him for a number of years. As a matter of fact, I prosecuted down there some members of the Legislature for bribery and he was the principal witness, and convicted them. He evidently got nervous about the situation and came to me in Charleston and told me what he was doing. "Well," I said, "Mr. Biddinger, you are violating the law. You are attempting to commit bribery." "Well," he said, "I have been advised that it i not." "Well," I said, "my opinion is that you are, and that the best thing you can do right now is to turn over this whole matter to the District Attorney of Kanawha County and to the Governor of West Virginia." I said, "No man has a right to ask you to violate a law, and you are bound to follow no man if he does ask you to violate the law. You are not bound to do that." And upon that the matter was placed in my hands, and from that on I took charge of it.

As I made further investigations Mr. Weil was indicted in the Intermediate Court of Kanawha County, West Virginia, two
453 felony indictments and two misdemeanors, the felony indictments charging him as accessory before the fact, and the misdemeanors charging him as principal.

The gist of the indictment is to the effect that through one Charlie Elliott, an ex-Adjutant General of the State, that he hired aided and abetted Mr. Elliott in making certain offers to the Public Service Commission of the state of West Virginia, or two members thereof, that if they would go into the District Court of the United States and testify therein for the purpose of and with the intent of setting aside the order of the Public Service Commission of the State of West Virginia.

The Governor: What were the offers made or said to be made?

Mr. Townsend: Twenty four thousand dollars in one case, to my recollection.

The Governor: That is, they offered the two members of the Com-

mission if they would testify to executive interference, thirty thousand dollars?

Mr. Townsend: Twenty four thousand dollars to one, and thirty six to the other, to my recollection. I am not positive that that statement is true, but it is in this record.

454 Now, in addition to that testimony of Mr. Biddinger's to the effect that, acting for Mr. Weil, he authorized Mr. Elliott to make these offers, Mr. Weil wrote a letter to the Burns Agency complaining of the conduct of Mr. Biddinger which letter we fortunately have in our possession. In that letter, over his own signature, he authorized Mr. Elliott to make the definite proposition of ten thousand dollars to the Commissioner to go into court and state the "truth," and if, by going to court and stating the "truth,"—for going into court and stating the court he would pay them ten thousand dollars each.

The Governor: That is they were getting ten thousand dollars each for testifying, and if they lost their jobs they would get ten thousand dollars each more?

Mr. Townsend: No, if they lost their jobs they were to get ten thousand dollars each. Any way, they were to go to court and testify to the "truth," and if by testifying to the "truth" they lost their jobs, they were to get ten thousand dollars. That was the inducement, ten thousand dollars.

After he was indicted in the Intermediate Court of Kanawha County, which is a court created by the Legislature for the purpose of trying criminals only—he made application to the

454½ Circuit Court of Kanawha County for a writ of prohibition against the Intermediate Court, to prevent that court from proceeding with the trial. The Circuit Court of Kanawha County granted that writ of prohibition and tied the hands of the Intermediate Court. We immediately appealed that case to the Circuit Court of Appeals of West Virginia and that case was decided last October by the Circuit Court of Appeals of the state, and the five judges unanimously held that not only did the Intermediate Court of Kanawha County have jurisdiction to try the case, but if we could prove the facts as alleged and set out in the indictment and which are here in this record, that Mr. Weil was guilty of attempted bribery. Every single proposition that he took, every single position that he took as to why he should not be tried by the Intermediate Court, the Circuit Court of Appeals of the State of West Virginia decided adversely to him.

From the Circuit Court of Appeals of the State of West Virginia he obtained a writ of error to the Supreme Court of the United States, upon the theory, as I understand it, that if any offense was committed at all it was an offense committed against the Federal Government, inasmuch as he was trying a law suit in the

455 Federal court at that time; if any act had been done which was a violation of the law it was an offense commited against the Federal Government and not against the State Government. That case is on the docket. We have submitted a motion to dismiss for lack of jurisdiction or transfer to the summary docket or to

affirm the decision of the state court. That motion will be heard on the 29th day of May, 1916, the notice have been served yesterday.

Now, our interest in this matter is this: We feel that if the facts can be established as we believe they exist and we feel that they can be established—that Mr. Weil has committed a very grave offence against the public welfare of the State of West Virginia; and if I can imagine as true all the offences charged against Mr. Biddinger in the State of Illinois, I could not conceive that they are as serious to the public welfare of the State of Illinois as the offence of Mr. Weil is serious to the public welfare and public weal of the State of West Virginia.

Now, there is that comity existing between the Governors of states, and in this instance we feel that Your Excellency ought to give to West Virginia the preference and let us get through with our case,
and when we are through, I am authorized to say to the
456 Governor of the State of Illinois that Mr. Biddinger can be
turned over at any time the authorities here want him. The charges here have been slumbering against him for five to eight years, as I understand it. I am advised that it was attempted to be shown that these charges were brought to the attention of the District Attorney of Cook County by Mr. Weil himself. If that is true,—and Mr. Weil admits that, he admitted that in a public statement in New York last week,—if that is true, what is the purpose of Mr. Weil's presenting charges against Mr. Biddinger in Illinois, except to defend himself against the charges of bribery in the State of West Virginia? It would appear that Illinois is being used—not intentionally; I don't make any charges of bad faith against anybody, and do not want to be understood as doing that at all—against anybody connected with the proceedings against Mr. Biddinger in Illinois.

The Governor: Well, the State's Attorney said yesterday that when Mr. Weil brought the case to him with these complaints that he declined to present them to the Grand Jury until they filed their complaints in accordance with the statute before an examining magistrate, a committing magistrate.

Mr. Townsend: I understand that is true. I have not
457 attempted to go into the details of the case in all its aspects,
but just to present the case as it really presents itself to us, that this is not a case presented on the part of Cook County or the State of Illinois against Mr. Biddinger, except at the instance of Mr. Weil, and for the purpose of aiding Mr. Weil to defend against the grave charge of the State of West Virginia, we believe one of the gravest that can possibly be committed against the laws of any state, that of attempting to bribe a public official. We want to get it to a trial down there just as soon as possible, yet, while Mr. Weil proclaims in every instance his innocence we have fought since January, 1915, to get this case to trial before a jury in Kanawha County, the only tribunal on earth that can determine whether or not he is innocent, and we feel that we have been prevented from submitting our case to a trial by jury because of the activities of Mr.

Weil in placing every technical defence known to law in our path. All we want is to get our case out of the way, and then if Illinois wants Mr. Biddinger, so far as we are concerned, they can have him. We will deliver him to you from West Virginia soil.

Mr. Johnston: I am going to ask Your Honor to allow me to read a synopsis of Weil's version of the history of the proceed-
458 ings out of which the criminal charges against Weil in West Virginia arose. It is not very long and I am going to ask Your Honor's indulgence, and then I will take up the only question which I really think is involved here, which is a purely legal one, a matter of law. This matter of comity, whatever that means, seems to be based on a request or personal favor. But there are legal rights here involved, and I know Your Honor will decide this purely as a matter of law and will protect the legal rights and will leave the legal rights in such status that they can be availed of by the parties who are concerned, and will not rest upon a mere whim, caprice, expression or favor of any individual, even though he be the Governor of West Virginia. I will come to that in a few moments—purely a matter of law here.

(Reads:) "The present case had its beginning in objections made before the Public Service Commission of West Virginia to Governor H. D. Hatfield's domination of the Commission by A. Leo Weil, a Pittsburgh attorney, in 1914. Mr. Weil, as general counsel for a gas company whose rates had been cut by the Public Service Commission of West Virginia to ten cents per thousand feet for industrial consumers and twenty cents for domestic, appealed for re-
459 lief to the United States Court, claiming that such rates were confiscatory, and in addition, charging that the Commission in its findings, had been dominated and controlled by the Governor."

You will observe that the first charge made was by Weil against the Governor, a very serious charge too, that the Governor had dominated and influenced this Commission for political purposes and created a great sensation undoubtedly in West Virginia. The Governor was naturally enraged, and I say, on the face of this proceeding, it is perfectly apparent that the Governor's action was largely retaliatory against Weil. Weil charged the Governor with undue influence and domination of this commission; the governor seeks to have some counter charge against Weil, and he retaliates by criminal proceedings. It appears to be a personal matter largely between Weil and the Governor, and politics lying at the very base of it. (Reads.)

"Mr. Weil is not only one of the leading attorneys in Pittsburgh, but has been prominent in municipal reform work, as president of the Voters League of that city, as an officer of the National Municipal League, and as a member of many local and national organizations interested in municipal work. Governor Hatfield is one of the surviving members of the Hatfield family of feud fame, and was the ambitious and dominating leader of his political party.

Naturally, these charges made a sensation throughout the entire district. The information upon which these charges were based had

been received by Mr. Weil from a dozen or more prominent
460 attorneys and others to whom Public Service Commissioners Howard N. Ogden and Charles H. Bronson had talked. Later, General C. D. Elliott, for many years United States Marshal and afterward Adjutant General of West Virginia, a personal friend of Roosevelt's, and a candidate for Congress on the Progressive ticket, reported to Mr. Weil that these two Commissioners had given him information of the Governor's interference for use in his political campaign. He stated that he thought he could get them to make signed statements to that effect. He was told that such statements would be valuable and to get them. He returned some time later without the statements and met Mr. Weil and three of his associate counsel in the case. He suggested then that, as the Governor had the authority to remove the Public Service Commissioners, he should be permitted to say to them that if they lost their positions by reason of telling the truth in the United States Court that Mr. Weil and his company would take care of them. He was told that under no condition could he make such an offer. Although the two commissioners talked freely to General Elliott, as they did to many others, they did not give him signed statements. Mr. Weil then decided to have a dictaphone rigged up and get the Com-
461 missioners' conversations with General Elliott corroborated in that way, it having been decided by the Supreme Court of West Virginia that such evidence was admissible. Mr. Weil then wrote to W. J. Burns in New York, of the Burns National Detective Agency, asking him to come over personally to make the arrangements for the dictaphone work. Burns, however, sent Guy B. Biddinger, with a letter introducing him as his Assistant General Manager and personal representative. There was present with Biddinger, Walter Hochberg, Manager of the Agency's Pittsburgh office. Mr. Weil explained that all he desired was to have the Agency rig up a dictaphone in certain hotels in West Virginia and get reports of an interview between General Elliott and Commissioners Bronson and Ogden. No other detective work was to be done and nothing was to be handled by Biddinger or the Burns Agency except to place the dictaphone and get the reports. So that there could be no misunderstanding, Mr. Weil called in his stenographer and dictated the instructions, which were typewriften for Biddinger. Biddinger explained then that the Burns Agency was doing certain work for Governor Hatfield. He said that they were employed by the Governor to catch a prominent state official with a woman, but that this employment would not prevent them
462 taking Mr. Weil's work. This was on October 22, 1914. It later developed that the Agency, through Biddinger, had done and was then doing a great deal of work for Governor Hatfield and his friends, and that Biddinger was on the closest personal relations with them.

Biddinger after being retained immediately went to West Virginia and met General Elliott, who was to arrange for the interviews. Biddinger told General Elliott that he was to promise these commissioners that Mr. Weil would compensate them for their losses in

salary if they lost their positions by going on the witness stand and telling the truth in the United States court. General Elliott at first refused to do this, stating that Mr. Weil had positively forbidden him to make such promises. He insisted on calling Mr. Weil by long distance phone. Biddinger, however, finally persuaded him to arrange the interviews and make the promises, which he did.

Biddinger returned to Pittsburgh on October 26, 1914, with the dictaphone reports. When Mr. Weil saw that promises had been made to the Commissioners he was very angry and upbraided Biddinger severely. Biddinger then asked if there was anything illegal about such promises and Mr. Weil told him there was not, but that he did not care to use such records in the trial of the case, and,
463 in addition, that he had never authorized such promises to be made and would not fulfill them. He said that if these Commissioners were ever called as witnesses and thereby lost their jobs, that they would expect General Elliott to make good, which he would be unable to do. This, he said, would put General Elliott in an intolerable position with his friends.

Mr. Weil met Biddinger in Burns' office in New York on November 9th, 1914. He stated that he wanted the dictophone report, signed by those who had been present, so that he could use them whenever it became necessary.

Mr. Weil's first suspicion that Biddinger's failure to carry out his instruction in getting the dictophone report, had been more than the mere bungling of the detectives, came when he received, apparently by mistake, copies of four telegrams. These copies were sent to Mr. Weil by the Agency with its bill for services up to that date, and were sent by the accounting department to show the purpose of charges for certain telegraphic toll. Mr. Weil at once came to the conclusion that Biddinger was guilty, not of bungling but of a frame-up to make it impossible for him to use these reports in the United States Court."

In other words, that Biddinger being in the employ of both
464 Weil and Governor Hatfield, was so framing that he was attempting to get evidence, but in such a way that it could not be used by Weil, but could be used by Governor Hatfield. In other words, Biddinger was apparently acting in a dual capacity for Weil and Hatfield, but was in fact acting for Hatfield as aginst Weil, his employer.

(Reads:)

"Special Report.

Pittsburg Operation No. 922.

Special Investigation.

No. 5105—N. Y.

Re: New York Office reports:

New York,

November 9th, 1914.

Today Assistant General Manager G. B. B. sent the following telegram to T. C. Townsend, Prosecuting Attorney, Charleston, W. Va., in connection with the above entitled matter:

"Had conference here with Weil. Think it important arrange meeting with Governor and yourself immediately. Wire when and where I can see Governor."

Expenses.

Telegram N. Y. to Charleston, W. Va., $.79.
No time.
X-18.

465 *Special Report.*

Pittsburgh Operating No. 922.

New York No. 5105.

Re: New York Office Reports:

New York,

Sat., November 10th, 1914.

Assistant General Manager G. B. B. sent the following telegram to Governor H. D. Hatfield, of West Virginia, in connection with the above case, at 4:15 P. M. this day.

"Wire when it will be convenient for me have conference with you. Important."

Assistant General Manager G. B. B. sent the following telegram to Mr. T. C. Townsend, Prosecuting Attorney, Charleston, West Virginia, in connection with the above case, at 4:15 P. M. this day.

"When can you arrange conference for Governor yourself and myleft. Important. Wire."

Expenses.

Two telegrams to Charleston, .95.
No time.
J. A. L.

466 *Special Report.*

Special Investigation.

Pittsburgh Optg. No. 922.

New York No. 5105.

New York Office reports:

New York,

November 12th, 1914.

Principal W. J. B. sent the following telegram to Mr. T. C. Townsend, Prosecuting Attorney, Charleston, West Virginia, in connection with the above case, at 9:40 A. M.

"Mr. Biddinger on his way."

Expenses.

Telegram to Charleston, .40.
No time.
J. A. L.

Biddinger, following up his telegrams, went to West Virginia on November 13, 1914, where he met the Governor, Prosecuting Attorney T. C. Townsend and others. A few days later he came to Pittsburgh and talked with Mr. Weil about the reports and their value as evidence. Mr. Weil's suspicions were now thoroughly aroused, and he wrote to the Agency for a full explanation. Biddinger at once went to Charleston, where, on November 27, 1914, he again saw the Governor and the Prosecuting Attorney. He then came to
466½ Pittsburgh, and finding Mr. Weil out of the city waited three days. He attempted then to induce Mr. Weil to write a letter to Burns Admitting that he had authorized Biddinger to make promises to the Public Service Commissioners. He gave as his reason for desiring this letter that he wanted to square himself with Burns. Mr. Weil refused, and Biddinger left in a rage, returning immediately to West Virginia, where he had another meeting with the Governor, Prosecuting Attorney Townsend, and others.

On January 13, 1915, Mr. Weil was arrested while en route by train to Parkersburg to urge the Federal District Court to appoint a master in the equity case brought in that court to establish the charges that there had been executive interference in the fixing of the gas rate.

Mr. Weil was arrested near Parkersburg at midnight, and in spite of protest and offers to give bail at Parkersburg and in spite of a writ of habeas corpus issued by the Federal Judge there, he was dragged like a desperate criminal by three officers to Charleston, and there placed under excessive bail. On the night of the arrest, long before Mr. Weil reached Charleston, the news was sent out through the various press associations that "A. Leo Weil had been arrested for attempt
467 to bribe the Public Service Commissioners of West Virginia."

The publicity had evidently been arranged in advance. Mr. Weil gave bail, got back to Parkersburg and had a master appointed in the equity case, the court having held over the case until he could return. The charges against Mr. Weil are based on the testimony of Biddinger that he was authorized by Mr. Weil to make offers to these Public Service Commissioners if they would appear as witnesses and testify to the truth about the Governor's interference.

On the day before the date fixed for the hearing, before the justice of the peace, a special grand jury was empaneled, so as to secure an indictment, and thus prevent the facts in the case being brought out at a public hearing. Biddinger was in New York and was called upon the telephone by Prosecuting Attorney Townsend and told that he was wanted in Charleston to appear before the special grand jury. Being outside the State of West Virginia, he was beyond the jurisdiction of their courts and could not be forced to attend such a hearing. Instead of waiting to appear as a witness at the public hearing as Mr. Weil desired, Biddinger went to Charleston and appeared before the grand jury, which indicted. Biddinger then stated to a friend that he was going to try to give Mr. Weil twenty years in the pen.

468 Although anxious to have all the facts brought out as soon as possible at a public hearing, Mr. Weil did not desire to submit to a criminal trial in West Virginia on account of the brutal and outrageous practices of their criminal courts, which force a defendant to remain in jail without bail during his trial, and because of the local prejudice and the control of the Courts by political factions; Mr. Weil contended and charged that the whole proceeding against him was a frame-up to prevent him proceeding with his case in which he had charged the interference by the Governor with the Public Service Commission.

Mr. Weil at once appealed to the Circuit Court of Kanawha County, which issued a writ prohibiting the trial. The court in granting the writ said:

"I hold that the indictment does not charge that the defendant attempted to produce false testimony, or bribe a witness to swear falsely. I, therefore, think that the indictment is not good.

"I do not find it a violation of the law for a man to offer a reward for the securing of the honest truth in any case in a court of justice, whether a man be litigant or lawyer. The truth can really hurt or wrong nobody.

"On the third question as to whether this defendant has committed an offence against the state law by attempting, as charged in the indictment, to procure evidence in the case pending in the federal

court, I hold that the federal court has jurisdiction over that matter entirely, and that the intermediate court of this county has not. I therefore sustain the writ."

469 On an appeal by the Commonwealth to the Supreme Court of the state, the writ of prohibition was quashed and the case remanded for trial. In handing down the decision the Supreme Court in effect held that in West Virginia it was the duty of a public official to suppress the truth in a case pending in the Federal Court, saying:

"A proper defence of that suit by all lawful means, even to the extent of refraining from giving testimony, if such testimony should be fatal to their defence, was as much their official duty as it would have been to institute proceedings for the enforcement of their order, in the event the plaintiffs in that suit had not sued to avoid it, but, instead, had obstinately refused to obey it."

Then the present Judge of the Supreme Court resigned to become a candidate for governor with the open and public support of Governor Hatfield and his political organization.

Mr. Weil at once appealed to the United States Supreme Court on the federal questions involved.

Immediately after his arrest Mr. Weil began an investigation of Biddinger, of whom he knew nothing, except that Biddinger had been sent to him by Burns with the highest recommendations. This investigation was necessary to impeach Biddinger's testimony if the case ever came to trial. Mr. Weil got more than he was look-

470 ing for. He found in Chicago such evidence of an amazing criminal career that he decided it to be his duty, both to himself and to the public, to turn over the facts to the Prosecuting Attorney and other agencies of that city for the prosecution of crime."

Mr. Townsend: I beg your pardon. You did not read all of that quotation from our Supreme Court opinion.

Mr. Johnston: I read all I had here.

Mr. Townsend: I don't want the Governor to get the idea that the Supreme Court said that because that quotation bites it off at a comma, and it really means nothing.

Mr. Johnston: I thought it was very clear and unambiguous, that these people could refrain from testifying if it would tend to defeat the defence.

The Governor: Have you the opinion there?

Mr. Townsend: Yes, I have got it. You can see that the quotation stops at a comma. (Hands Governor book.)

Mr. Berger: We have the reported case here.

The Governor: I can see that the theory of it, Mr. Johnson, is on the same principle that the courts have repeatedly held that a juror cannot impeach his own verdict, that a judge cannot impeach his own decision. It is on that ground, as I understand it. In other

471 words, the Commissioners, having acted, they were not bound to impeach their own act by testifying.

Mr. Johnston: Yes, but I suppose where there was a charge it could be opened up.

The Governor: Well, fraud is very frequently charged in regard to

verdicts of juries, but we all know that a juror cannot be called to impeach his own verdict.

Mr. Johnson: I see where the rule would be excellent as a matter of judicial policy as applicable to a jury, and would be wholly inapplicable as to a Commission of this kind.

Mr. Townsend: That is the opinion, and that opinion there is not a correct quotation of the opinion of the court.

Mr. Johnston: I have to take issue with you there.

The Governor: It is correct so far as it goes.

Mr. Johnston: It goes completely to the sense of the paragraph and it stops at no comma.

I have given Your Honor the synopsis of the history of this affair in order that you may get an idea of how the critical matters arose in West Virginia, as well as in Illinois. I have given you this version of the history of these proceedings, as I said yesterday I would
472 give it, in order that you might get a general idea how it all arose, but not for the purpose of presenting it to you as any argument in regard to the precise question involved at this time. It is wholly immaterial and irrelevant as to how these matters arose in West Virginia, and the status in West Virginia as far as this question that arises on the motion, is concerned; and it is wholly immaterial now, also, what may be Mr. Weil's personal interest in this matter. Merely because, as an accident, these crimes of Biddinger were discovered by Weil's investigation, and that they may be used for Weil's own personal benefit, does not exclude the action which should be taken by the public authorities. Every day in criminal procedure warrants are sworn out for all kinds of motives that prompt the immediate act. It may be malice on the part of one criminal, it may be the hope of immunity on the part of one criminal but those motives which may prompt the disclosure of crime have nothing to do with the prosecution by the public authorities, because they must undoubtedly prosecute; because as a collateral matter Mr. Weil may be benefited by this prosecution would not prevent and should not prevent the public authorities of Illinois from acting. Now, in that connection, it is suggested by counsel that these
473 charges have slumbered for years.

The Governor: Five to eight years.

Mr. Johnston: Perhaps that is true. It is undoubtedly true. But why on earth does a man become immune from prosecution merely because the state or public authorities have not been informed of or discovered the crime. Why, a number of the most important prosecutions that have been conducted by the State's Attorney's office related to crimes committed *to* several years prior, which had never been discovered until the immediate, recent time. I think it is perfectly obvious that that constitutes no argument against the prosecution of crime, because it has slumbered and been undiscovered. If counsel could show that the public agency had full cognizance of all these facts and had not acted,—even that would not exclude the prosecution of crimes, but would be only a reflection or charge upon the public authorities for failure to do their duty, and if these authorities at present in office knew about it, it would be their duty to prosecute.

Provided it has not been barred by the statute, there is no reason why it should not be prosecuted, and if Your Honor has any doubt on that matter satisfactory evidence can be produced which will prove conclusively to Your Honor that the statute has not expired in
474 this case, but that this man was a fugitive from Illinois and took up his residence in New York at a time which stopped its running, and the State's Attorney's office has no hesitancy in saying that Your Honor can be convinced of those facts.

Now, I am going to take briefly what I consider the only question involved in this case. It is a question purely of law. It is a question which has been up before Your Honor, many, many times during your executive labors in the office of governor; that Your Honor is controlled largely by the face of the papers setting up the essentials to the demand for a requisition.

The Governor: You contend that the Governor has no right to go into the good faith of a prosecution?

Mr. Johnston: I do not so contend.

The Governor: In other words, has it not been repeatedly held that where a criminal prosecution has been instituted for the purpose of compelling a defendant to pay a civil debt, if the Governor should become impressed with that belief, that he would have the right to deny the requisition.

Mr. Johnston: There is no question about it. I can say from the illustration given that if parties were bringing a criminal proceeding simply for the purpose of enforcing some civil liability and had no intention of following up that criminal prosecu-
475 tion and perhaps would abandon it or would not present the witnesses which would assist the public agencies in conducting the prosecution, then I think Your Honor certainly could not refuse the request. There is no doubt about it, because it would be evident on the face of it, from the inquiry that Your Honor had made, from the facts that Your Honor has suggested, that the parties were not acting on good faith to have a criminal prosecution conducted, but that they would use it only to a certain limited extent for recovering a civic indebtedness and then abandon it. That has been frequently done over in the State's Attorney's office, through the State's Attorney's agency, although always a strict watch is kept where such a suspicion might arise. If the State's Attorney is in a position that he is clearly of the opinion that the crimes charged are going to be prosecuted, there is nothing for him to do but to bring them to trial, there is nothing else to do where there is a crime charged and it is apparent to him that the parties are going to prosecute that crime to finality, and bring in all the evidence they have. He has no discretion. It is a public duty and he would be guilty of malfeasance in office if he neglected
475½ to prosecute. He cannot go into motives, whether it be malice or politics or retaliatory, or what-not. As long as there is a bona fide intent on the part of the prosecuting witness or the prosecuting complainant to continue in the prosecution and assist the public agency in the prosecution, why, the State's Attorney can do but one thing, and that is to prosecute the offence. And I say, analogously,

that Your Honor should be gover-ed identically by the same rule of law; that where a demand is made for a fugitive from justice—I am assuming now that he is a fugitive from justice on criminal charge, I am assuming now that the papers show a criminal charge—and Your Honor is satisfied that there will be a criminal prosecution on the return of that fugitive, there is no discretion left in Your Honor.

The Governor: What are these charges against Biddinger in this state? There are fifty-one or twenty-one complaints.

Mr. Cantwell: Fifty-one.

The Governor: What are they?

Mr. Johnston: The extradition—three cases on the extradition application. One is bribery, the others larceny.

The Governor: Bribery of whom?

Mr. Berger: Receiving bribes as a police officer.

476 The Governor: There are fifty-one complaints of alleged police graft, is that it?

Mr. Johnston: Yes, Your Honor. I might state right here that Your Honor may remember the name of Biddinger yourself.

Mr. Berger: Fifty-one distinct offences.

Mr. Johnston: This Biddinger was in the detective bureau when Your Honor was Mayor, and he was transferred from the detective bureau because of charges that were made, or suspicions that were directed against him, to Brighton Park. I think the order was authorized by Your Honor.

The Governor: I don't recall it.

Mr. Johnston: He is the same party.

So, I say, that if Your Honor is satisfied that this criminal prosecution is going to be conducted to a finality in Illinois by the State's Attorney and if you are further satisfied that the essentials requisite to granting the requisition are shown on the face of the papers, namely, a crime and a fugitive from justice, and that the statute of limitations has not run, I say there is no discretion in you as an executive, but it is your imperative duty to grant the requisition and have the fugitive brought back and put on trial, and I contend that irrespective of what benefits Mr. Weil may incidently derive from this prosecution. We cannot be concerned in that. This is a

476½ public prosecution, a matter of interest to the whole community, of the people of the State of Illinois, and we must not be concerned in individual questions which might arise, individual benefits or disadvantages, of course cannot affect or influence a question which is purely a public one, which is made on behalf of the public and which, of course, must be acted upon in your executive capacity as a public agent of the people. You have no discretion in this matter, if Your Honor please, if you will permit me to state it in that way, unqualifiedly. I do not think any alternative is presented in this case but the one which I have stated.

I might say further on this question of Mr. Weil's interest, or the benefit which he might derive incidently from this prosecution, that he should be entitled to it. If this man Biddinger is what he is claimed to be, if he has the reputation which is charged against

him on the face of these warrants, those matters should be established, so that the West Virginia jury will know just exactly the character of the witness, Biddinger, when he appears before them. I do not believe, I cannot believe that Mr. Townsend would want to present Biddinger to a West Virginia jury and vouch for his
477 credibility and his reputation, and integrity, if he believed that Biddinger was not worthy of credibility. The Supreme Court has stated repeatedly and all the text writers are unanimously in the same position that cross examination and impeachment is one of the greatest weapons that the defence has; that a witness should not be allowed to appear as a reputable man, when, in fact, he is a disreputable citizen, unworthy of credibility and of unworthy reputation.

The Governor: Mr. Biddinger, if he appeared before the West Virginia court, could be asked in relation to each one of these fifty-one charges.

Mr. Johnston: No, Your Honor.

The Governor: Why not?

Mr. Johnston: He could not.

The Governor: Not whether he was indicted, but could he not be asked, did he not receive a bribe from so and so.

Mr. Johnston: No, he could not, because that could be shown only by the record of the conviction.

The Governor: That could be shown by the man's own statement.

Mr. Johnston: The Supreme Court has said otherwise. I can show you the authorities. In other words, they could not by a confession or subterfuge defeat the rule which would prohibit
478 showing a crime on cross examination.

The Governor: But if he could be asked, "Didn't you take ten dollars from John Jones on a certain day at the City of Chicago——"

Mr. Johnston: If Your Honor will permit me to state it, I can show you abundant authorities in this state. I would have likevery much to have an opportunity to put that question myself on cross examination, but I was not allowed to.

The Governor: Suppose he offers himself as a witness or is testifying on the stand. I do not mean to say that you can put him on and prove other crimes against this man. But where he offers himself on cross examination his whole life can be gone into, from the cradle to the grave.

Mr. Johnston: Mr. Cantwell has interposed too many objections to my question on that very point not to agree with me.

The Governor: You can ask him about all the facts of his life.

Mr. Johnston: Let me give you one illustration in which the Supreme Court down here has said you cannot by subterfuge——

The Governor: There is no subterfuge about that. When a man appears upon the witness stand he offers himself as a man worthy of belief. You have a right to go into that man's whole
479 record.

Mr. Johnston: The Supreme Court says you cannot in-

sinuate or suggest the commission of a crime on cross examination. I can convince Your Honor.

The Governor: You would have to do it by the burden of authorities because I have seen it so often in court. You go on the witness stand and let an adroit cross examiner get a hold of you and he will find out everything about you from the cradle to the grave.

Mr. Johnston: Yes, if an objection is not interposed.

The Governor: Yes,—They have a right to ask anything that affects your veracity or credibility.

Mr. Johnston: This question was asked on cross examination. The state did not have the record of conviction against the defendant in this particular case, but the fact was that he had been——

Mr. Cantwell: That was a defendant.

Mr. Berger: He is the same as any other witness.

Mr. Johnston: They stand identically in the same relation. If the defendant takes the stand he puts himself on identically the same plane as any other witness.

In this case the state knew that the defendant had, as a matter of fact, been confined in the penitentiary, but did not have
480 the record of conviction. So on cross examination the defendant was asked "Where were you living at such and such a time," and his whole residence was gone into up to the time when he was in the penitentiary. The prosecuting attorney, knowing that he was there during this period, said, "Where did you live between two certain dates? Where were you then?" The court permitted the answer to be made that he was in the penitentiary, and the Supreme Court reversed the case, and said, "You cannot by subterfuge show that this man was in the penitentiary." The rule is positive, fixed and emphatic that it can only be shown that he was convicted of crime by the record, and not by parole. In civil cases it can be shown by parole. The statute so permits, but in criminal cases it cannot.

The Governor: I am still of the opinion that I have already expressed.

Mr. Johnston: I think I will convince Your Honor to the contrary, that it cannot be done, he cannot be asked if he had been guilty of these various briberies and these various offenses charged here.

Now, we will go to the motion in this case, the request *of* the part of the State of West Virginia that this requisition be revoked,
481 that Your Honor has previously granted.

The Governor (addressing Mr. Townsend): As I understand your statement this morning you desire to have it recalled.

Mr. Townsend: Yes.

The Governor: And that it be held in abeyance until after the Weil case is disposed of?

Mr. Townsend: That is all.

Mr. Cantwell: We have not gone into the merits. We could have done that. I can show by public records that every one of these fifty-one charges have been outlawed.

Mr. Johnston: It is not a public request from West Virginia that

the State of Illinois give preference to them in this case. There is no requisition on the state. Merely a request of the Governor that this requisition be held in obeyance until some proceedings are disposed of in West Virginia. When they are to be disposed of is not disclosed; how long it will take; when it will be reached for trial, is unknown at the present time. The whole thing seems to be very indefinite. It is not even in a case on trial that Biddinger is wanted as a witness. There is not even an immediate prospect of the case being put on trial, or even within a reasonable time. The
482 case cannot be tried in West Virginia, as I understand until disposition is made of the appeal in the Supreme Court of the United States. And as the records show in that case in the Supreme Court it has been merely docketed. No motion has been made to dismiss.

The Governor: They say a motion was made yesterday.

Mr. Berger: The record at 9:30 yesterday morning did not disclose it.

The Governor: 9:30 is early in the morning.

Mr. Johnston: When it will be acted on nobody has any idea.

Mr. Townsend: I take it that the Court will consider it on the 29th day of May. We have made a motion to dismiss, confirm or transfer to the summary docket, all combined as one.

Mr. Berger: The practice is that it takes from sixty to ninety days to dispose of a motion.

Mr. Johnston: What disposition will be made of it, we do not know at the present time, and I think a fair conclusion is that the whole matter in West Virginia is in indefinite shape, and may perhaps be tied up for months and perhaps for years, so far as we know. In other words, there is nothing definite or immediate in West Virginia in which Biddinger can be used. What is the object
483 of the request of West Virginia; why is it that they want this matter recalled?

The Governor: Well, we can be candid about that. Of course your gentlemen are arguing from both sides your legal points. But it is very apparent here that there is an effort on one part to smirch the character of a witness and an effort on the other part to pre[illegible]t that character being smirched, before this trial. Isn't that true?

Mr. Johnston: There are no sublime, enoble emotions influencing the governor of West Virginia in this case. It is just a desire on his part to win his case against Weil, to save this witness before the case from the truth, if the truth be shown against him. Now, I ask Your Honor if this motive underlying this request, whether you consider it a fair, honest motive which would justify your executive interference simply to satisfy Governor Hatfield in his present designs, whether political or ambitious or otherwise, against Weil, to *prevent* to a West Virginia jury a witness to offer from the stand evidence from a man of unquestioned reputation or credibility, when in fact that man is wholly unworthy of credibility or belief. Now, I repeat, once more, that if Biddinger is in fact the man he is charged to *me*, and has the reputation which these papers show on their

face to exist, Governor Hatfield of West Virginia himself should join with the State of Illinois in having those facts established. He should not put himself in the position of vouching for the reputation of a man whom he knows or whom he has reason to believe is a disreputable, unworthy and discreditable citizen. Criminal cases should not be won in that way. There should be no effort on the part of the public authorities to suppress the truth in regard to the reputation of an individual who is to be used as a witness for such agency. If they know what his reputation is they should allow it to be shown, and they should not attempt to suppress or conceal it. And I say this, stating this question broadly and plainly as it appears here, that it is the effort on the part of the Governor of West Virginia as indicated in this application, to have Biddinger appear to be a clean, reputable citizen in the trial of a criminal proceeding against Weil, when, in fact, he is put on notice that Biddinger is not a reputable citizen. Now, why should a high minded public official of that kind desire to be placed in such a position? But, irrespective of Governor Hatfield's motive; irrespective of whether Governor Hatfield is very solicitous of protecting Biddinger and attempting to suppress the disclosure of the truth against him, I say that Your Honor cannot grant this request. This matter should be left in a legal status where the rights of all parties can be enforced. It should not be put back in a position where the State of Illinois is left practically without any remedy against Biddinger.

Now, let us see if that would not be the effect if Your Honor should grant the request and recall this warrant and hold it in abeyance. Biddinger would then be a free man so far as the State of Illinois was concerned. He would be without the jurisdiction of West Virginia. Neither the State of Illinois nor the State of West Virginia could by any compulsory process bring him into either jurisdiction. How would the State of West Virginia compel Biddinger to appear in West Virginia as a witness? What compulsory process could they use to force Biddinger to leave New York and appear in West Virginia? The answer would be that "we are certain" or the governor will say that "Biddinger will come to West Virginia at our request." Yes, at merely your request but there is no legal compulsion to force him there.

The Governor: (Addressing Mr. Townsend.) That is true, isn't it? You do not contest that. In other words, if Biddinger made up his mind that he did not want to go to West Virginia, you could not get him there?

Mr. Townsend: No, we don't contest that. That is primary.

Mr. Johnston: They could not get him into West Virginia to use his testimony in this case against Weil nor could we get him in Illinois.

The Governor: We can get him from New York.

Mr. Johnston: If he is there. But what assurance have we that Biddinger will not take flight? We have here the suggestion that he wanted to go to Australia.

Mr. Cantwell: That proposition came from the other side.

The Governor: The suggestion is said to come from Mr. Greenebaum, and they say it came from Biddinger. They both agree it was discussed.

Mr. Johnston: If we know anything about Biddinger's character it would make us very easy and fearful that perhaps if this requisition were recalled and held in abeyance, that we might not get Biddinger at all in the State of Illinois. Furthermore if we should express solicitude for West Virginia, they might not get him in West Virginia at all.

Where is Biddinger going to remain pending the trial of the case in West Virginia? What control has the Governor of West Virginia over Biddinger that he can induce Biddinger to go to West Virginia? Suppose that Biddinger does go into West Virginia when this case of Weil is brought to trial at some indefinite time, we know not

487 when.

The Governor: We can get him just as easy from West Virginia just as easy as we can get him from New York.

Mr. Johnston: Let's see. How can they hold him under arrest?

The Governor: We are assuming that when he goes to West Virginia we can issue a request—requisition for him there.

Mr. Johnston: All right. If he stayed there. But supposing he goes there, how can he be held in West Virginia? For what purpose can they compel him to remain there?

The Governor: You can't force a man to remain any place.

Mr. Johnston: That is precisely what I am arguing to Your Honor now, precisely. He can't be compelled to remain in West Virginia. Suppose he want there and testified in Mr. Weil's case. After the prosecution of that case, after the termination of that case how can Governor Hatfield hold Biddinger in West Virginia?

The Governor: He couldn't hold him anywhere, but the people of the State of Illinois can get him from any place in the United States.

Mr. Johnston: If they can find him. How can the Governor deliver Biddinger to Your Honor after the termination of this prosecution?

488 Mr. Cantwell: He can issue a fugitive warrant, putting him under arrest and hold him.

Mr. Johnston: How can they place him under arrest?

The Governor: We can get him any where in the United States.

Mr. Johnston: If he is there. But Governor Hatfield, in support of this motion, tell Your Honor that he will deliver Biddinger to Your Honor, when he is through.

The Governor: That is simply an expression of a disposition. He couldn't *go* it any more than they could do it in New York.

Mr. Johnston: I know. But this is a matter based on legal rights, not on rights that may rest in the favor or disposition on the part of anybody. I don't think it would be right, if Your Honor will permit me to say so, to leave this matter where it would rest on the favor or disposition or intent of the Governor of West Virginia. It should be left in a legal status where it can be enforced by law, with-

out favor or request or disposition on the part of anybody. I say it is an important matter and one which should be considered by Your Honor, as to whether Biddinger would remain quietly and pleasantly anywhere where he could be brought back on a warrant.

He is now resisting this very warrant in New York. How
489 can the Governor of West Virginia force him to return here, when, at the present time, he is resisting the application for his return?

Now, why is it necessary that this requisition be held in abeyance? The rights of West Virginia, all rights can be preserved and Biddinger be held securely and safely if this warrant is issued. He can be brought back to Illinois. He can go to the penitentiary, and if he is needed or wanted as a witness in West Virginia he can be sent to West Virginia as a witness. There is no answer to that. There can be no denial of that statement. He can be used whenever he is wanted in West Virginia, and he will be safe and securely kept in jail here, so that he may respond both to the requests of Illinois and West Virginia. On the other hand, if he does not want to go to West Virginia, whether he is in Illinois or New York, I don't see how they can get him there. They can't compel him to go there. But if he is willing to go, the mere fact that he is under bond here in Illinois pending the disposition of his criminal cases, would not prevent him from going to West Virginia. He could go there just the same if he is disposed to go, unless he changes his mind and says he don't care to go. If he wanted to go to West Virginia while under bond on these
490 criminal matters here, he could go to West Virginia. In other words, I submit to Your Honor that Biddinger should be brought back to Illinois and compelled to give bail in these various cases so that he may be securely held to answer these charges, and that he be also held as far as West Virginia is concerned. It would be the logical position for West Virginia to assume to join with Illinois in putting Biddinger under proper bonds so that he may be safely held and so they may not have to depend upon his whim or caprice as to whether or not he will go to West Virginia. West Virginia will be safely secured by a bond, and Biddinger would be in Illinois to face the charges against him.

It has been sugggested here, if Your Honor please, that there is no legal right or ground underlying this motion which is made by the Governor of West Virginia, because Biddinger may never appear in West Virginia as a witness. It depends entirely upon his wishes, his whim or caprice in the matter, and the Governor of West Virginia has not any assurance that Biddinger would even go to West Virginia. Yet in view of the indefinite condition of this case, he asks you to revoke or withhold or recall this warrant for Biddinger until at some indefinite time a trial of Weil is begun, and upon the contingency that possibly or probably Bid-
491 dinger will go to West Virginia as a witness in that case. I say the request on the part of the Governor of West Virginia misconceived the whole rights of the parties involved and misunderstands the law involved. You cannot deprive a state of its legal

rights and put the state's rights simply on the will or favor of the executive of another state. I submit that the matter must be determined according to legal experience and that the order of Your Honor must be based upon legal rights and rest upon the legal rights which are enforcible by all parties, and that they must not be left for the enforcement of any right merely relying on the favor or wishes or whim of any third party. I say, viewing the question in that light, there is just one thing for Your Honor to do under the law involved in this case,—and it is purely a question of law—and that is to allow this warrant to stand as it now exists.

Mr. Berger: There was a long distance call from New York and Mr. Walker of our office says relative to the hearing yesterday—here is a resume of the conversation: That Governor Whitman will honor the warrant if Governor Dunne will issue it.

The Governor: Well, the Governor of New York told me his position in a telegram. He simply continued the hearing one
492 week to see what the result here was.

Mr. Townsend: I don't want to waste any more of your time, but I do want you to thoroughly understand the position of West Virginia in this matter. All we are asking is that our rights be preserved. We feel that there is a relation existing between the different states of this union, whether you call it comity or courtesy or whatever you call it, that one state should not allow or permit its legal machinery to be—to set on foot through charges filed by private sources for the ultimate purpose of causing the legal machinery to get into action to defeat or hamper or retard the working of the legal machinery of some other state.

Mr. Johnston was good enough to mention the question of good faith in connection with these matters. The question of good faith in extradition matters, if your Excellency please, goes further than the mere attempt to expedite for the purpose of collecting a debt.

The Governor: Well, if you can show any ulterior motive.

Mr. Townsend: Yes. If the governor of one state can say that the extradition of the person charged with crime is for any other purpose than to observe in good faith the laws of the demanding state, the gover- has a right, if he cares to exercise that right, to deny extradition.

493 Now, the State of West Virginia is in this position: We want Biddinger; we want his testimony. I am frank enough to say that we want it if we can get it in the best shape we can have it.

Mr. Johnston: Do you want to suppress the truth about it?

Mr. Townsend: We don't want to suppress the truth about anything.

Mr. Johnston: You want to suppress the truth about Mr. Biddinger.

Mr. Townsend: As the Governor suggested it is a primary rule that whenever a witness goes on the witness stand you can inquire into his whole life, from the cradle to the grave, I have done it so often myself that I am convinced of it.

The Governor: If that is not the law, myself and judges of Cook County have committed error over and over again.

Mr. Johnston: I think Mr. Johnston is confused on certain phases of it.

The Governor: You cannot take a defendant and put him on the stand to prove other crimes committed by him, but when he takes the stand and offers himself as worthy of belief and asks that his testimony be considered by the jury trying the case, then his life can be gone into.

Mr. Townsend: That is my understanding of the law.

The Governor: Not the charges against him, but the facts
494 in his life can be inquired into.

Mr. Townsend: That is right.

Now, recurring again to the question of good faith, as I said a moment ago, I am not charging the District Attorney's office of Cook County or Mr. Johnston or anybody connected with it, with bad faith.

The Governor: Nobody is. The State's Attorney of this county has done his full duty in this case.

Mr. Townsend: The Governor of West Virginia don't charge it. I do not present evidence to that effect to Your Honor today, but we do present this feature, that the legal machinery was set on foot by a party, not for the purpose of defending the laws of the State of Illinois, but to serve his own defence down in the State of West Virginia, and I say that is bad faith on his part, that is using the State of Illinois and the laws of the State of Illinois for a purpose—in bad faith from his standpoint. The charges originated in bad faith so far as Illinois is concerned, because they originated, and as the Tribune Stated some days ago, were the result of an extensive inquiry financed by Mr. Weil himself.

Is he so interested in the laws of the State of Illinois? Does he want to see the laws of that state upheld to the extent that he
495 is going to spend a large amount of money for the purpose of vindicating those laws? I see no question of bad faith presented anywhere in this proceeding, in a request that one state respects the rights of another state.

Mr. Johnston: Let me state that Mr. Weil does not claim that he began this investigation in the first instance in order to assist the State of Illinois in prosecuting Biddinger. He incidently unearthed such disclosures that he thought it was his duty to place the matter before the State's Attorney.

Mr. Townsend: Now, it is said Biddinger double crossed somebody.

The Governor: They both employed him. Whether he is a good or bad man, they both employed him.

Mr. Townsend: They both employed the Burns' Agency. But when Mr. Biddinger wrote down he was convinced they were attempting to use him for the purpose of committing a crime, he did what any honest employee or any honest citizen ought to do, and the only thing he could do was to place the whole matter before the proper legal authorities for such investigation as they might see fit to make.

And I must call Your Excellency's attention to this fact, that nowhere in any statement issued by Mr. Weil or by anyone
496 representing Mr. Weil, does he attempt in any way to defend the remarkable letter that he wrote, to which he signed his own name, and in which he stated that he authorized the payment to the two public service commissioners of the State of West Virginia of the sum of ten thousand dollars, provided they lost their jobs.

Now, the Supreme Court of the State of West Virginia says that is bribery, and I do not believe that Your Honor believes that the Supreme Court of the United States when that case is finally reached for hearing, that that court is going to say that the Supreme Court of the State of West Virginia has no right to say that they sent him down to violate the laws of that state. In other words, I have always believed the law to be this, that the construction of a state statute by the state court is binding upon the federal court, as is the construction of a federal statute by the federal court binding upon the state courts.

We want Mr. Biddinger as a witness whether he is in New York or West Virginia. He is not a man that can get clear away where nobody can reach him. He cannot be evaporated, without leaving any trace. In all probability he would have been gone now if he could have been gotten away so easily. When we are through
497 with the serious charges pending against Mr. Weil in West Virginia,—and they are serious—there can be nothing more serious than the charges down there,—when we are through down there with Mr. Biddinger, while he is within the jurisdiction of that state, and he will be there, the State of Illinois can have him, they can get him, we can deliver him. Of course, if he should flee, why——

Mr. Johnston: That is the very question I suggested. How do you know that he will be there? What assurance have you that you will deliver him?

Mr. Townsend: Well, he was always there when we wanted him. If he is within the jurisdiction of the state, then, Mr. Johnston, there is no question about his delivery, none in the world. And there is this difference between the charges made against Mr. Weil in West Virginia and the charges against Mr. Biddinger in Illinois: The charges against Weil have reduced to an indictment by the grand jury; not only have they been reduced to an indictment by the grand jury, but the Supreme Court of that state has held that that indictment is valid and good. It is a remarkable procedure that such a situation can be brought about in our practice, as that an indictment can be held good in any other way than by a demurrer or motion to quash. But nevertheless that is the result of
498 the litigation in West Virginia, that the indictment has been held to be an invalid indictment.

Mr. Johnston: May I ask one question, Mr. Townsend?

Mr. Townsend: Yes.

Mr. Johnston: What assurance have you that Mr. Biddinger will go to West Virginia.

Mr. Townsend: We have only the assurance that we have had.

The Governor: His word?

Mr. Townsend: We have no bonds.

The Governor: How old is Biddinger?

Mr. Cantwell: Thirty-five or forty.

Mr. Townsend: We are not here asking that the charges against Biddinger be dismissed. We are not here asking that he be not brought to justice. We are simply here asking your Honor to let us down in West Virginia continue our efforts, and if possible get the charges against Mr. Weil at issue. It is not our fault that we have not done so. We have done everything within the power of the state to do it.

The Governor: Are your judges in West Virginia elected or appointed?

Mr. Townsend: They are elected.

The Governor: Elected by the people?

Mr. Townsend: Yes.

499 We have moved just as rapidly as it is possible for us to move under the law, and as soon as it went to the Supreme Court of the United States, they put up approximately a thousand dollars to have that record printed. And immediately after the record was printed or as soon thereafter as we could get it because of other duties, we submitted the motion. While it is true, as the gentleman said, application for a writ of error was made last November, we put up the money for this record, a thousand dollars, in December, and I think it was about February, or something like that, that the record was sent out. Anyway, we moved just as rapidly as we could, and it is not our fault. If Mr. Weil wanted to get the case over with, he could get it over mighty quick by dismissing the appeal to the United States Court.

I will say this in conclusion: That there is no disposition on the part of the Governor of West Virginia to clog in any respect the wheels of justice in Illinois or any other state. We will go with you wherever we can, to vindicate your laws, but we want to preserve this testimony of Biddinger, as far as we can, in the best shape it is possible to preserve it for submission to a jury.

I thank Your Excellency.

500 The Governor: I can dispose of this matter now. I think it is clearly my duty to recall this writ.

Here is the situation: A sovereign state institutes a prosecution. That prosecution has been pending for two or three years. It now appears that one of the witnesses for the prosecution, after living in New York for avout five years, is indicted at the instance of the defendant in West Virginia, for crimes committed five to eight years ago in the State of Illinois.

As I have intimated two or three times, we can talk about the legal effect of this case all we want to, but it is apparent that the effort is here on one side to discredit that witness and the effort is on the other side to clear that witness.

I don't think one state should step in and interfere with the legal proceedings being conducted in another state unless there will be great injury to that state. I cannot see any great injury to this

state in recalling this warrant and issuing it at the proper time, that is, after these proceedings now pending are disposed of.

I am not going to assume that a sovereign state is engaged, through its executive and through its courts, in a political scheme to injure a man who is placed on trial, in accordance with
501 the laws of that state. I don't think I have any right to do so. Biddinger can be secured by the State of Illinois at any time that state wants him, and after these proceedings are disposed of in West Virginia this writ of extradition can be directed to any governor of any state in the United States.

Mr. Johnston: In the meantime the disposition of it may be indefinite, interminable.

The Governor: That is true. But there is a very serious charge here of enormous value to the community in West Virginia, against Weil. The charge against Biddinger here is serious, but it is police grafting, petty in comparison with the charge in West Virginia, which is attempting to bribe officials of that state, members of the Public Utility Commission, one of the most important bodies of the state. I don't think I ought to step in and interfere in any way while they are in that proceeding.

The writ will be recalled and held in the Governor's office in Springfield, so far as I am concerned, until the proceedings in West Virginia terminate.

Which were all of the proceedings had upon the hearing of said motion.

(Here follow photographs marked pp. 502 and 503.)

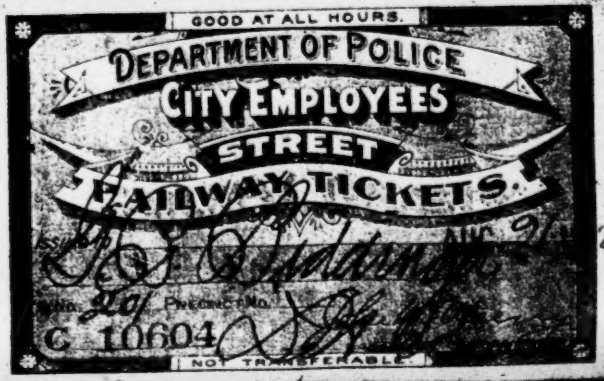
502 MA. 973
Beddington
Cornwallis-West
p50v

No-973 } p. 503
B. Eddington
Citizen

CONDITIONS.

1. This book will be taken up by the Conductor and returned to the office of the Chief of Police if presented by any person but the one whose name is written hereon.
2. This cover must be returned to the office of the Chief of Police with any or all fares canceled before another will be issued in its place.
3. Good on Sundays.
4. Good on week days at all hours.
5. Tickets are good only when detached by the Conductor and for the fare of the person in whose name it is issued and of no other person.

Name _____



504 *Order Appealed From.*

At a Term of the United States District Court for the Southern District of New York, Held in and for said District, in the United States Post Office and Court Building, in the Borough of Manhattan, City of New York, on the 7th Day of December, 1916.

Present: Hon. Augustus N. Hand, Judge.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

A writ of habeas corpus having heretofore been issued out of this Court on the petition of Charles H. Griffiths verified on the 8th day of June, 1916, and the Court having thereafter duly permitted an amendment of the said petition by having it made to appear therein that Guy B. Biddinger was the petitioner for the issuance of a writ for the release from imprisonment of the relator Guy B. Biddinger, and said writ of habeas corpus having been directed, among others, to Arthur Woods, as Police Commissioner of the City of New York, having been duly served upon said Police Commissioner and said Police Commissioner having on said 8th day of June, 1916, produced the body of said Guy B. Biddinger in this Court pursuant to said writ of habeas corpus, and the Court having thereupon admitted said Guy B. Biddinger to bail, and said Police Commissioner having duly made his return to said Writ of Habeas Corpus, certifying to this Court that he held said Guy B. Biddinger in custody by virtue of a warrant issued by Hon. Charles S. Whitman, Governor of the
505 State of New York, directing the arrest of said Guy B. Biddinger and his delivery to one Patrick J. Murphy, who was the duly appointed messenger of the State of Illinois, for the extradition of said Guy B. Biddinger to said State as a fugitive from its justice, and the relator, said Guy B. Biddinger, having duly filed a traverse to said return, and the application for the discharge of the prisoner from custody upon said writ of habeas corpus having duly come on to be heard before this Court upon said petition, writ, return and traverse, and the parties having submitted their proofs, and after hearing Moses H. Grossman, Esq., and Charles H. Griffiths, Esq., of counsel for the relator, in support of said application, and Robert S. Johnstone, Esq., Assistant District Attorney for the County of New York, and Isidor J. Kresel, Esq., for the State of Illinois, in opposition thereto,

Now, upon motion of Isidor J. Kresel, it is

Ordered that said application be, and the same is hereby, in all respects, denied, that said writ of habeas corpus be, and the same is hereby dismissed, vacated and set aside, and that the relator be, and he hereby is, remanded to the custody of Arthur Woods, Police Commissioner of the City of New York.

AUGUSTUS N. HAND, *U. S. D. J.*

Approved as to form:

ISIDOR J. KRESEL,

For the State of Illinois.

506 *Allowance of Appeal.*

District Court of the United States, Southern District of New York.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

To the United States District Court for the Southern District of New York:

Guy B. Biddinger, the petitioner above named, conceiving himself aggrieved by the order of this Court made and entered in the above entitled proceeding, and filed in the office of the Clerk of this Court on the 7th day of December, 1916, wherein and whereby, among other things, it was ordered and directed that the writ of habeas corpus sued out by the petitioner be dismissed, vacated and set aside, and your petitioner remanded to the custody of the Police Commissioner of the City of New York, does hereby appeal from said order to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith; and your petitioner prays that this appeal may be allowed and a citation issue directed to the Police Commissioner of the City of New York, commanding him to appear before the said Supreme Court of the United States and to do and to receive what may appertain to justice to be done in the premises, and that a transcript of the record and of the proceedings and
507 papers upon which the said order was made, after due authentication, may be sent to the Supreme Court of the United States.

Dated: December 7th, 1916.

GUY B. BIDDINGER, *Petitioner.*
CHARLES H. GRIFFITHS,
HOUSE, GROSSMAN & VORHAUS,
Attorneys for Petitioner, Appellant.

Office & Post Office Address, #120 and 115 Broadway, Borough of Manhattan, City of New York.

Upon the foregoing petition, it is ordered that the appeal be allowed as prayed for this 7th day of December, 1916, and that pending the determination of the Supreme Court of the United States upon said appeal, the petitioner be released on bail in the amount of Fifteen thousand dollars ($15,000.00).

AUGUSTUS N. HAND, *U. S. D. J.*

508 *Certificate of Probable Cause.*

At a Stated Term of the District Court of the United States, Held in and for the Southern District of New York, at the Post Office Building, in the Borough of Manhattan, City of New York, on the 7th Day of December, 1916.

Present: Hon. Augustus N. Hand, Judge.

In the Matter of the Habeas Corpus of GUY B. BIDDINGER.

An order having been made in the above entitled proceeding dismissing the Writ of Habeas Corpus heretofore granted upon the petition of the above named Guy B. Biddinger, and the Petitioner desiring to appeal from the said order to the Supreme Court of the United States,

Now, on motion of Charles H. Griffiths, Esq., one of the attorneys for the said Guy B. Biddinger,

It is hereby certified that in the opinion of this Court there exists probable cause for an appeal from the said final order of dismissal herein to the Supreme Court of the United States, for which reason the said appeal should be and is hereby allowed.

AUGUSTUS N. HAND, *D. J.*

509 *Citation on Appeal.*

Supreme Court of the United States of America.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

The President of the United States of America to the United States of America and the Commissioner of Police of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, in the District of Columbia, on the 6th day of January, 1917, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, in a proceeding upon a writ of habeas corpus wherein Guy B. Biddinger is appellant, and the Police Commissioner of the City of New York is re-pondent, to show cause, if — there be, why the order made by the said United States District Court in said proceeding dismissing the writ of habeas corpus and remanding the relator to the custody of the Police Commissioner of the City of New York should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States this 7th day of December, in the year one thousand nine hundred and sixteen.

AUGUST N. HAND, *U. S. D. J.*

510 *Amended Assignment of Errors.*

District Court of the United States for the Southern District of New York.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

Amended Assignment of Errors.

The above named Petitioner, Guy B. Biddinger, having appealed to the Supreme Court of the United States, from the order of this Court dismissing the Writ of Habeas Corpus herein, made and entered during the November term, 1916, respectfully alleges and makes the following assignment of errors:

I. The Court erred in refusing to discharge the petitioner, Guy B. Biddinger, upon the said Writ of Habeas Corpus.

II. The Court erred in granting the said order dismissing the said Writ of Habeas Corpus.

III. The Court erred in refusing to sustain the said Writ of Habeas Corpus, upon the ground that the Executive Warrant of Extradition recites three separate and distinct charges of crime; while the requisition for, and warrant of, extradition can be based only upon a single charge of crime.

IV. The Court erred in refusing to hold that the papers upon which the requisition was based, were insufficient; and that no evidence was submitted to the Governor of Illinois, upon the issuance of his requisition, to prove that the said Guy B. Biddinger was a fugitive from justice; and in excluding proof that there was no evi-

511 dence offered before the Governor of Illinois to show that Guy B. Biddinger was a fugitive. That the attempted proof of fugitiveness, upon which the requisition was based, was insufficient for that purpose, being based entirely upon information and belief, without stating the source of such information or the grounds of such belief; and the court erred in excluding evidence to show that Shelby M. Singleton, whose affidavit is attached to the petition of the State's attorney for Cook County, for the requisition, had no personal acquaintance with the relator, Guy B. Biddinger, and had no personal knowledge of any of the facts contained in the petition of the State's attorney, or in his own affidavit.

V. The Court erred in refusing to hold that the papers upon which the warrant of extradition was issued, were insufficient; and that no proper evidence was contained therein, nor submitted to the Governor of New York, upon the issuance of his warrant of extradition, to prove that the said Guy B. Biddinger was a fugitive from justice; and in refusing to hold that the evidence taken before the Governor failed to show that Biddinger was a fugitive from justice.

VI. The Court erred in holding that Guy B. Biddinger is a fugitive from justice of the State of Illinois.

VII. The Court erred in holding that the burden to prove the physical and corporeal presence of Guy B. Biddinger in the State of Illinois at the times of the commission of the crimes charged in the indictment, was not upon the prosecution.

VIII. The court erred in refusing to hold that the said Guy B. Biddinger does not stand charged with any crime in the State of Illinois.

IX. The Court erred in refusing to hold, that it appears upon the face of the papers and on the testimony taken before the Governor, that no crime was committed by the said Guy B. Biddinger under the laws of the States of Illinois.

512 X. The Court erred in holding, that the burden was upon Guy B. Biddinger to prove his absence from the State of Illinois at the time of the commission of the alleged crimes charged in the indictments.

XI. The Court erred in refusing to hold, that it affirmatively appears from the papers and from the evidence taken before the Governor, that the crimes alleged to have been committed were committed (if at all) from seven and one-half to twelve years ago, and are, therefore, barred by the Statute of Limitations of the State of Illinois.

XII. The Court erred in refusing to hold, that it appeared from the papers and from the evidence taken before the Governor, that the said Guy B. Biddinger was a resident of the City of Chicago and of the State of Illinois, for a period of more than four years after the date of the latest crime charged in the indictments.

XIII. The Court erred in holding as inadmissable, evidence offered to prove that the Statute of Limitations of the State of Illinois had run against the several indictments upon which the warrant of extradition is based, and erred in excluding the same.

XIV. The Court erred in excluding evidence that Guy B. Biddinger had been openly and publicly and usually a resident within the State of Illinois continuously during all the times mentioned in the indictments and continuously for the twelve years preceding August 15th, 1914.

XV. The Court erred in excluding evidence to prove that during the period from 1900 up to and including January, 1914, Guy B. Biddinger was employed successively as a patrolman, detective and detective-sergeant of the Police Department of the City of Chicago, State of Illinois, having been appointed some time prior to 1900, and having served continuously as a member of the Police Department of the City of Chicago until January 25th, 1914, when he submitted his resignation as a member of the Police Department, which

513 was accepted and went into effect on January 26th, 1914. That during all of that time he was subject to the call of such Police Department for service, and that during his furloughs or temporary absences from Chicago, during that period, he was absent on police duty, with the knowledge, consent and approval of the Police Department of the City of Chicago, through its superior officers subject to the call and recall by the head of the Police De-

partment; and that whenever so recalled to Chicago by the Police Department, he did appear there, and that he openly and publicappeared in that city during the years 1911, 1912, 1913, 1914 and 1915; and that at the time of the appearances of Guy B. Biddinger during his employment in the Police Department in Chicago, he called upon his superior officers in such Department, and that they at all times knew where to find him and where to address him and where he was, so that he could be recalled by them at any time.

XVI. The Court erred in excluding evidence to prove that Guy B. Biddinger did not leave the City of Chicago or the State of Illinois, either in May 1911, or at any other time, with the intent or purpose to flee or escape from any charge, indictment or prosecution for the crimes alleged in the indictments upon which the Governor's warrant is based, or for any other crime whatever, and that his absences from Chicago and his leaving there, were always on police and official business, and for the purpose of detecting crimes and apprehending prisoners.

XVII. The court erred in excluding evidence to prove that no proof was offered either before the Grand Jury or to the Governor of the State of Illinois, or the Governor of the State of New York, that the relator was not a resident of the City of Chicago, or State of Illinois, or that he was not usually and publicly a resident
514 of the State of Illinois, during the years 1911, 1912, 1913 and 1914, or during any other period of time, or that Guy B. Biddinger did not openly and publicly reside in the City of Chicago, State of Illinois, during the periods aforesaid, or that he was not employed in the Police Department or subject to the call or recall of such Police Department, or that he did not, when called upon by his superiors in the Police Department, respond to such call and present himself to the Police Department of the City of Chicago.

XVIII. The Court erred in excluding evidence to prove that at the time of the appointment of any person as a member of the Police Department of the City of Chicago, State of Illinois, he must be, and during the term of his employment thereafter, must always remain, a citizen of the State of Illinois and an actual resident of the City of Chicago, State of Illinois.

XIX. The Court erred in excluding evidence to prove that on the 25th day of November, 1913, the relator, Guy B. Biddinger was duly promoted and advanced by the head of the Police Department of the City of Chicago, State of Illinois, from the position of Detective to that of Detective Sergeant.

XX. The Court erred in excluding evidence to prove that A. Leo Weil, who is charged with being the head and front of the prosecution, and with inspiring and initiating the extradition proceedings, was charged, under four indictments, with attempted bribery of the Public Service Commission, which indictments were found and filed in the Intermediate Court of Kanawha County West Virginia, at the January 1915 Term of that Court; that he obtained a writ of prohibition to restrain the said Intermediate Court, which is the Criminal Court of the State of West Virginia, in which said indictments were found and are pending, from proceeding with the

trial of such indictments, which writ of prohibition was granted in March 1915; that the Supreme Court of Appeals of the State of West Virginia reversed the writ of prohibition; that there-
515 upon, in or about October, 1915, the said A. Leo Weil obtained a writ of error and supersedeas of the Supreme Court of the United States, to review the order of the Supreme Court of Appeals of West Virginia, reversing the writ of prohibition, and thus obtained a stay of proceedings; that such appeal and stay have ever since been and now are pending, and in full force and effect; and that the relator Guy B. Biddinger, is a necessary and indispensable—in fact the most important—witness for the State of West Virginia, in the said prosecution against said A. Leo Weil.

XXI. The Court erred in excluding evidence to prove that, when the writ of prohibition was reversed by the Supreme Court of Appeals of the State of West Virginia, and some time in January, 1916, the said A. Leo Weil employed lawyers and detectives in Illinois, and by the use of his own personal moneys, activities and influence, caused fifty-one complaints or informations for fifty-one separate alleged crimes, to be filed before (and fifty-one separate warrants to be issued by) a Police Judge of the City of Chicago, which complaints and warrants said Weil took to the State's Attorney of Cook County, Illinois, who made an application to Governor Dunne of Illinois based upon them, for a requisition upon Governor Whitman of New York, for the extradition of Biddinger; that the warrant of extradition was signed by Governor Whitman of New York; that hearings were had before Governor Whitman and Governor Dunne, separately; that Governor Dunne revoked his requisition; and that thereupon Governor Whitman vacated his warrant on or about May 1st, 1916.

XXII. The Court erred in excluding evidence to prove that at a public hearing upon an application for the withdrawal of the requisition for Biddinger's extradition from New York, held before Governor Dunne of Illinois on April 22nd, 1916, the Governor of Illinois, in deciding to withdraw his then pending requisi-
516 tion for the extradition of Biddinger from the State of New York, made the following statements which are a part of the record;

That it appears that Biddinger was indicted for crimes committed five to eight years ago in the State of Illinois, at the instance of A. Leo Weil, the defendant in a criminal prosecution in West Virginia; that he did not think one State should step in and interfere with the legal proceedings being conducted in another State, unless there will be great injury to that State; that he did not see any great injury to the State of Illinois in recalling the requisition and reissuing it at the proper time, that is, after the West Virginia proceedings against Weil are disposed of; that Biddinger can be secured by the State of Illinois at any time that State wants him, and that after the criminal proceedings against Weil are disposed of in West Virginia, this writ of extradition can be directed to any Governor of any State in the United States; that this is a very serious charge (of enormous value to the community in West Vir-

ginia) against Weil; that the charges against Biddinger in Illinois, are police grafting, petty in comparison, with the charge in West Virginia, which is attempting to bribe officials of that State, members of the Public Service Commission, one of the most important bodies of that State, and that he did not think he ought to step in and interfere in any way in that proceeding. That after making these statements and rendering the opinion and decision aforesaid, Governor Dunne ordered his requisition withdrawn.

XXIII. The Court erred in excluding evidence to prove that the Governor of West Virginia, by several communications addressed to Governor Dunne of Illinois and to Governor Whitman of New York, sought to prevent the extradition of the relator Guy E. Biddinger or at least, the suspension of the Executive Warrant, upon the grounds, urged by him that Biddinger was an indis-
517 pensable witness in the prosecution of the indictments against said Weil in West Virginia, and that Governor Hatfield would and did guarantee that the said Biddinger would surrender himself to the jurisdiction of the State of Illinois or of the State of New York, whenever required, after having testified in such criminal proceedings in West Virginia, and thereunto he pledged his personal honor and the integrity of the State of West Virginia.

XXIV. The Court erred in excluding evidence to prove that Governor Dunne of Illinois did state to Governor Whitman of New York, that if Governor Whitman signed the warrant of extradition, Governor Dunne had the promise of the State's Attorney of Cook County that Biddinger would not be tried in Illinois until Weil's case had been tried in West Virginia.

XXV. The Court erred in excluding evidence to prove that, upon this statement by Governor Whitman, the relator Guy B. Biddinger offered to give, and now offers to give, a surety company bond, or cash bail, in any amount which might be required, to answer to the indictments found against him in Illinois, but that the State's Attorney of Cook County Illinois, refused to accept a surety company bond or cash bail, or to enter into any stipulation or agreement not to try Guy B. Biddinger until after Weil had been tried, but stated that he would try Guy B. Biddinger immediately, or at any time he saw fit.

XXVI. The Court erred in excluding the correspondence between the Governors of the States of Illinois, New York and West Virginia, and between the Governor of New York and the attorney for Guy B. Biddinger upon the hearing, relative to the vacatur of the first and second warrants of extradition.

518 XXVII. The Court erred in refusing to hold, that the requisition from the Governor of the State of Illinois was obtained by fraud and deception, and the prosecution instituted in bad faith.

XXVIII. The Court erred in refusing to hold, that the papers and evidence before the Governor showed that the proceedings to obtain such warrant were instituted in bad faith.

XXIX. The Court erred in excluding evidence to prove that

the prosecutions and indictments in Illinois, and the extradition proceedings, were instituted maliciously, without probable cause, in bad faith and to serve private and personal ends,—and not for the real or genuine purpose of trying the relator, Guy B. Biddinger, for any real crime that is claimed or alleged to have been committed by him.

XXX. The Court erred in refusing to hold, that the papers and evidence before the Governor showed that the complainants, upon whose testimony the said Guy B. Biddinger was indicted, were accomplices as to the crimes charged; that the extradition is sought solely upon their testimony; and that the same would be insufficient for his conviction.

XXXI. The Court erred in excluding evidence to prove the two sections contained in the Book of Rules and Regulations of the Police Department of the City of Chicago.

XXXII. The Court erred in refusing to allow the State of West Virginia to intervene as a party to this proceeding.

XXXIII. The Court erred in holding, that the only material question in this case is whether Guy B. Biddinger was physically and corporeally present in the demanding state at the time of the commission of the alleged crimes; and in ruling that all evidence offered upon any other question must be excluded.

XXXIV. The Court erred in holding, that the burden of proving affirmatively, in this proceeding, that Guy B. Biddinger is a fugitive from justice, is not on the prosecution, but that the burden is upon Guy B. Biddinger to prove that he is not a fugitive
519 from justice.

XXXV. The Court erred in holding, that the warrant of the Governor for the extradition of Guy B. Biddinger, is based upon sufficient proof, either of the commission of a crime by him within the State of Illinois, or of the fact that he is a fugitive from justice of said state, or that such warrant is sustained upon such proof as is required under the Constitution of the United States, or the Acts of Congress, regarding the extradition of fugitives, or that it is due process of law.

Dated, New York, N. Y., January 10th, 1917.

HOUSE, GROSSMAN & VORHAUS,
CHARLES H. GRIFFITHS,
Attorneys for Petitioner-Appellant.

520 United States District Court, Southern District of New York.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

It is hereby stipulated and agreed that the foregoing is a true statement of the evidence taken in the above entitled matter as agreed on by the parties, and may be approved and filed as such.

Dated February 21st, 1917.

HOUSE, GROSSMAN & VORHAUS AND
CHARLES H. GRIFFITHS,
Attorneys for Relator-Appellant.

ISIDOR J. KRESEL,
Attorney for State of Illinois, Respondent.

EDWARD SWANN,
District Attorney, New York County.

The parties having agreed thereto it is

Ordered that the foregoing be and the same is hereby approved as a true statement of the evidence in the above entitled matter.

Dated February 21st, 1917.

AUGUSTUS N. HAND,
U. S. District Judge.

521 *Stipulation on Appeal Record.*

United States District Court, Southern District of New York.

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated February 21st, 1917.

HOUSE, GROSSMAN & VORHAUS AND
CHARLES H. GRIFFITHS,
Attorneys for Relator, Appellant.

ISIDOR J. KRESEL,
Attorney for State of Illinois, Respondent.

EDWARD SWANN,
District Attorney, New York County.

521½ UNITED STATES OF AMERICA,
Southern District of New York, ss:

In the Matter of the Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as settled by the Court and agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 21st day of February in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States the one hundred and forty-first.

[Seal District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR., *Clerk.*

522 At a Term of the United States District Court for the Southern District of New York, Held in the Post Office Building, in the Borough of Manhattan, City of New York, on the 21st Day of February, 1917.

Present: Hon. Augustus N. Hand, Judge.

In the Matter of *of* GUY B. BIDDINGER.

Upon all the papers and proceedings had herein, and upon motion of House, Grossman & Vorhaus, and Charles H. Griffith, Esq., attorneys for the Relator herein, it is

Ordered that the time in which to file the record on appeal and docket the above case in the Supreme Court of the United States be, and the same hereby is extended to and including the 23rd day of February, 1917.

AUGUSTUS N. HAND,
U. S. D. J.

522½ United States District Court, Southern District of New York.

In the Matter of *of* GUY B. BIDDINGER.

It is hereby stipulated and agreed, by and between the attorneys for the respective parties hereto, that the time in which to file the

record on appeal to the Supreme Court of the United States be extended to and including the 23rd day of February, 1917.

Dated, New York, January 6th, 1917.

HOUSE, GROSSMAN & VORHAUS AND
CHARLES H. GRIFFITHS,
Attorneys for Relator, Appellant.

ISIDOR J. KRESEL,
Attorney for the State of Illinois.

EDWARD SWANN,
District Attorney, New York County.

523 [Endorsed:] U. S. District Court, Southern District of New York. In the matter of Guy B. Biddinger. Original. Stipulation and Order. House, Grossman & Vorhaus, Attorneys for Relator, 115 Broadway, Borough of Manhattan, New York City.

Endorsed on cover: File No. 25,803. S. New York D. C. U. S. Term No. 973. Guy B. Biddinger, appellant, vs. The Commissioner of Police of the City of New York. Filed March 6th, 1917. File No. 25,803.

APR 4 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States.

No. [redacted] OCTOBER TERM, 1916.

IN THE MATTER

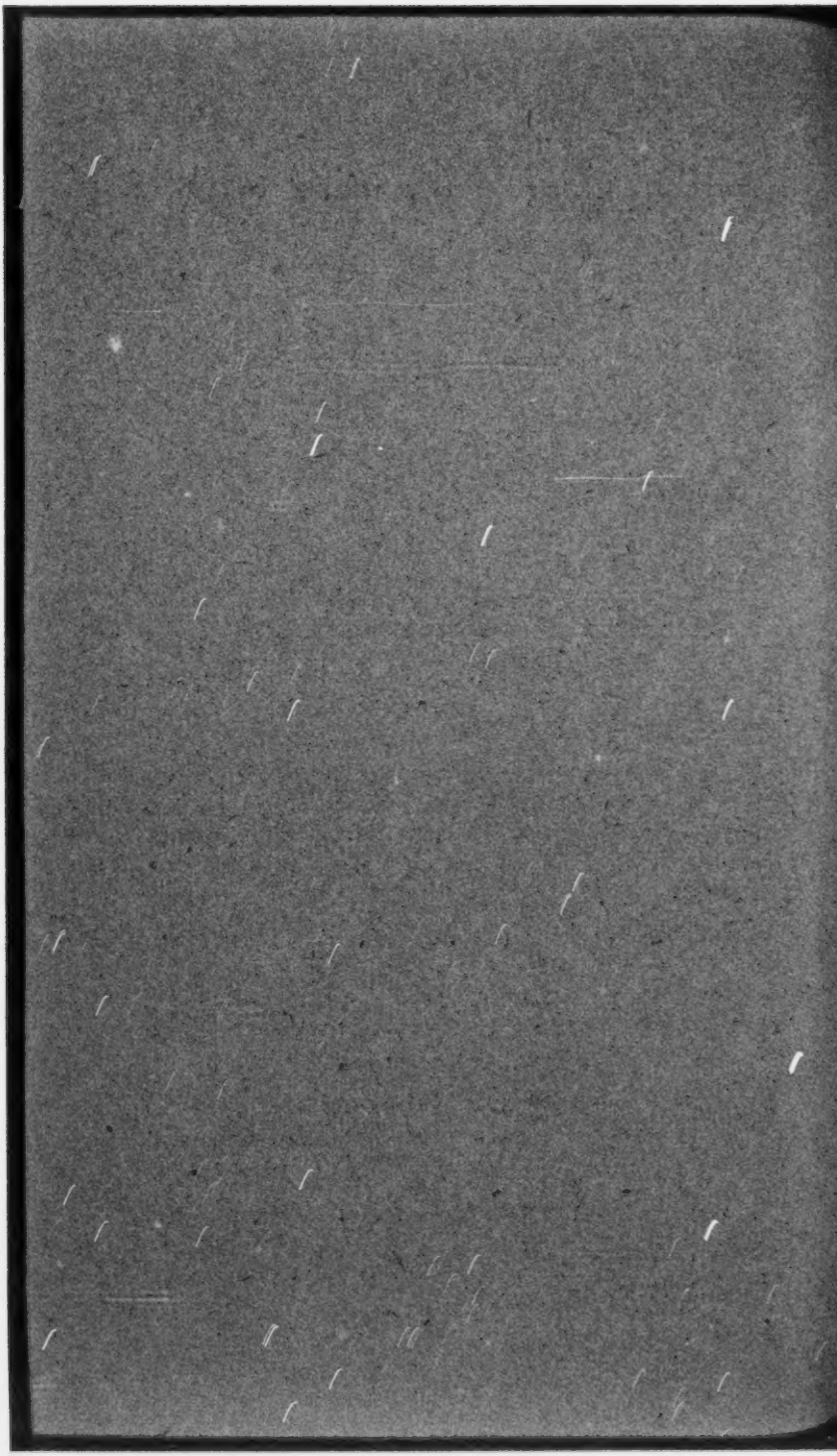
of

the application of GUY B. BIDDINGER for release from imprisonment upon a writ of habeas corpus.

PAPERS IN SUPPORT OF MOTION TO ADVANCE.

LOUIS MARSHALL,
ISIDOR J. KRESEL,
Attorneys for the State of Illinois.

EDWARD SWANN,
District Attorney,
New York County,
For Police Commissioner
of New York City.



Supreme Court of the United States

OCTOBER TERM, 1916.

No. 973.

IN THE MATTER

of

the application of GUY B. BIDDINGER for release from imprisonment upon a writ of habeas corpus.

NOW come the State of Illinois and the Commissioner of Police of the City of New York and move that upon the annexed notice and affidavits and the transcript of the record in the above entitled cause sent to this Court from the United States District Court in and for the Southern District of New York, this cause be advanced for a hearing before this Court and assigned for argument on the earliest date convenient to the Court during the present term.

LOUIS MARSHALL,
ISIDOR J. KRESEL,
Counsel for the State of Illinois.

EDWARD SWANN,
ROBERT S. JOHNSTONE,
Counsel for the Police Commissioner of New York City.

Supreme Court of the United States.

IN THE MATTER of the application of GUY B. BIDDINGER, for release from imprisonment upon a writ of habeas corpus.	October Term, 1916. No. 973.

SIRS:

PLEASE TAKE NOTICE, that upon the affidavits of Isidor J. Kresel, verified the 29th day of March, 1917, and of Henry A. Berger, verified the 28th day of March, 1917, copies of which are hereto annexed, and upon all the papers and proceedings heretofore had herein, we shall move this Court at the October, 1916, Term thereof to be held in the Capitol in the City of Washington, District of Columbia, on the 9th day of April, 1917, at the opening of Court on that day or as soon thereafter as counsel can be heard, for an order directing that the argument of the appeal in this case be advanced and that the same be set down for a day certain to be fixed by the Court.

Dated, New York, March 29th, 1917.

Yours, etc.,

LOUIS MARSHALL
ISIDOR J. KRESEL } Attorneys for the State of Illinois,

Office & Post office addresses,
120 Broadway and
37 Wall Street,
Boro. of Manhattan,
New York City, N. Y.

EDWARD SWANN,
District Attorney, New York County,
For the Police Commissioner of New York City,
Criminal Courts Building,
Borough of Manhattan,
New York City, New York.

To:
MESSRS. HOUSE, GROSSMAN & VORHAUS, ESQS.,
CHARLES H. GRIFFITHS, ESQ.,
Attorneys for Appellant,
115 Broadway and 120 Broadway,
Borough of Manhattan,
New York City, New York.

SUPREME COURT OF THE UNITED STATES.

IN THE MATTER of the Application of GUY B. BIDDINGER, for release from imprisonment upon a writ of habeas corpus.	October Term, 1916. No. 973.

STATE OF NEW YORK,
County of New York, } ss.:

ISIDOR J. KRESEL, being duly sworn, deposes and says:

I reside at No. 225 West 86th Street, in the Borough of Manhattan of the City of New York. I am an attorney and counsellor at law, admitted to practice in the Courts of the State of New York. I am a member of the firm of Jerome, Rand & Kresel, and my office is at No. 37 Wall Street, in the Borough of Manhattan of the City of New York.

During all the times hereinafter mentioned, I have been the attorney for the State of Illinois in the proceedings instituted on behalf of said State in the State of New York, to obtain the extradition of the above named Guy B. Biddinger from the State of New York to the State of Illinois.

Statement of the Matter Involved, with the Reasons for the Application.

This is a motion to advance, made pursuant to subdivisions 3 and 6 of Rule XXVI of the Rules of this Court.

This is a habeas corpus proceeding instituted in the District Court of the United States, for the Southern District of New York. The matter comes to this Court upon appeal from an order made by said District Court, and entered on the 7th day of December, 1916, dismissing said writ of habeas corpus.

While the assignments of error are numerous, counsel for the appellant repeatedly stated in the Court below that the main question to be presented upon appeal to this Court, is whether the Court below erred in declining to hear proof tending to show that the crimes charged in said indictments are barred by the State of Limitations of the State of Illinos. The Court below sustained objections to offers of such proof upon the authority of Reed v. United States, 224 Fed 378 (C. C. A., 9th Circuit, 1915).

The appellant here (the relator below) was apprehended under an executive warrant issued by the Governor of the State of New York, directing the extradition of the appellant from the State of New York to the State of Illinois. This executive warrant was issued upon the requisition of the Governor of the State of Illinois, requiring the rendition of the appellant as a fugitive from the justice of the State of Illinois, where he stands indicted upon six indictments, in four of which indictments he is charged with the crime of accepting bribes while a member of the police force of the City of Chicago, by the fifth indictment he is charged with larceny and obtaining money by means of the confidence game, and by the sixth indictment he is charged with the crime of permitting a prisoner,

whom he had in custody as a police officer of the City of Chicago, to escape from such custody. The appellant is at large upon bail, pursuant to the order of said District Court.

The reasons for the motion are:

(1) That the interests of the State of Illinois are suffering by the delay in that while the appeal is pending, the appellant being enlarged upon bail, said State is powerless to proceed with the prosecution of the appellant upon said indictments.

(2) That it is manifest that the appeal has been taken for delay only.

(3) That this habeas corpus proceeding is in the nature of a criminal case in that it arises in the course of a criminal prosecution and, under Subdivision 3 of Rule XXVI of this Court, should be advanced for argument.

The aforementioned indictments were found by the Grand Jury of the County of Cook of the State of Illinois and filed in the Criminal Court of Cook County on or about May 8, 1916.

On or about the same date the appellant was apprehended in the City of New York as a fugitive from the justice of the State of Illinois, upon a warrant issued by a City Magistrate of the City of New York, pursuant to the provisions of the Code of Criminal Procedure of the State of New York, and after a hearing, as provided for by said Code of Criminal Procedure, the appellant was committed to the custody of the warden and keeper of the City Prison of the City of New York, for a period of thirty days from the date of the said commitment, to enable the arrest of said appellant to be made under the warrant of the Governor of the State of New York on the requisition of the Gov-

ernor of the State of Illinois. The appellant was immediately thereafter released upon bail.

From that time on and to this date the appellant has used every available means to delay his extradition.

Through counsel in the State of Illinois, I am informed and verily believe, he requested a hearing before the Governor of the State of Illinois upon the question as to whether said Governor should issue a requisition for the extradition of the appellant upon said indictments. I am also informed and verily believe that the Governor of the State of Illinois granted a hearing upon that question and heard argument, and after adjourning the matter from time to time finally granted the requisition on or about the 31st day of May, 1916.

On or about the 2nd day of June, 1916, the requisition of the Governor of Illinois for the rendition of the appellant as a fugitive from justice of the State of Illinois, was presented to the Governor of New York. By said requisition it was in due form certified to the Governor of the State of New York that the appellant stood charged in the State of Illinois upon the aforementioned indictments with the crimes of bribery, larceny and permitting a prisoner to escape, which said Governor of the State of Illinois certified were crimes under the Laws of the State of Illinois, and that the said appellant was a fugitive from the justice of the State of Illinois. On said 2nd day of June, 1916, the Governor of the State of New York, upon said requisition and the papers accompanying the same, consisting among other things of exemplified copies of said indictments, duly issued his warrant, directed to the Commissioner of Police of the City of New York, ordering the arrest of the appellant and his delivery to the messenger named in the requisition of the Governor of the State of Illinois.

On the 8th day of June, 1916, the appellant was apprehended by virtue of the warrant of the Governor of the State of New York, and the contest to prevent his extradition to the State of Illinois was then transferred from the latter State to the State of New York.

Immediately upon his arrest, under the warrant of the Governor of the State of New York, the appellant caused to be sued out of the District Court of the United States, for the Southern District of New York, a writ of habeas corpus based upon a petition, charging that the appellant was unlawfully restrained of his liberty.

The Police Commissioner of the City of New York, pursuant to the writ of habeas corpus, produced the appellant in said District Court, where again he was immediately admitted to bail. The Police Commissioner made his return wherein he set up the warrant of the Governor of the State of New York as the cause of the appellant's detention, and the appellant traversed said return.

Following the appellant's arrest under the warrant of the Magistrate of the City of New York aforementioned, and prior to the issuance by the Governor of the State of New York of said executive warrant, I am informed and verily believe, the appellant caused a request to be made to the Governor of the State of New York for a hearing before said Governor, should a requisition be made for his extradition. For that reason the Governor of the State of New York directed at the time he issued said executive warrant, that the appellant should, if he desired, have a hearing on an application to revoke said executive warrant, and set June 23, 1916, as the date for said hearing. In the meantime the hearings in the District Court in the proceeding instituted by said writ of habeas corpus were adjourned pending the determination of the application to revoke the Governor's warrant.

On June 23, June 28, July 20, July 21, August 11, and September 9, 1916, said motion to vacate the Governor's warrant came on to be heard before the Governor of New York, and after argument, on the last mentioned date, the Governor of the State of New York denied the motion to revoke. This left the State of Illinois in this position: It had obtained a warrant from the Governor of the State of New York directing the appellant's extradition, but the execution of said warrant was restrained and made impossible by reason of the habeas corpus proceedings pending in the District Court of the United States, for the Southern District of New York.

The appellant was out on bail. He made no effort to bring on for hearing said habeas corpus proceeding, and thereupon and on or about the 6th day of October, 1916, on behalf of the State of Illinois, I moved in the United States District Court, for an order setting a date for the hearing in said habeas corpus proceeding. The appellant opposed the setting of an early date on the ground that he required time for the taking of depositions of various witnesses in Chicago, Illinois; San Francisco, California; Pittsburgh, Pennsylvania; and Charleston, West Virginia, which depositions he claimed he desired to use in the proceeding.

On or about the 21st day of October, 1916, an order was made by said United States District Court, fixing November 10, 1916, as the date for the hearing of said habeas corpus proceeding.

On or about October 2, 1916, the appellant served notice that he intended to take depositions de bene esse of fifty-eight witnesses in the City of Chicago, in the State of Illinois, to be used in said habeas corpus proceeding, and on the 4th of October, 1916, gave notice of the taking of similar deposition of two additional witnesses, also in the City of Chicago, State of Illinois. On or about October 14, 1916, he caused notice to be

served of the taking of depositions de bene esse of six witnesses in the City of Los Angeles, in the State of California, and of five witnesses in the City of Charleston, in the State of West Virginia.

On the 9th, 10th and 11th days of October, 1916, before a United States Commissioner in the City of Chicago, in the State of Illinois, the depositions of a large number of witnesses named in said notices were taken, and on the 28th day of October, 1916, in the City of Los Angeles, State of California, the depositions of witnesses mentioned in said notice were taken before a Notary Public, but in the subsequent proceedings upon said writ of habeas corpus, none of said depositions were used, and the depositions of the witnesses in the City of Charleston, West Virginia, were never taken.

I point this out as indicating that the appellant never intended to make use of such depositions, but made the applications and took such depositions simply for the purpose of delay.

Pursuant to the aforementioned order of the United States District Court, the parties met before the Court on the 10th day of November, 1916. The State of Illinois was prepared for the hearing; had witnesses in Court, and a mass of records which it had brought on from Chicago, but the appellant again asked for delay upon the ground that it was most important that he have time to take the depositions of the witnesses in Charleston, West Virginia. The Court thereupon directed that whatever evidence was to be offered, should be adduced before a United States Commissioner, and that all proof should be in by November 20, 1916.

On November 11, 1916, and again on November 15, 1916, hearings were had before the United States Commissioner, but none of the testimony taken there was subsequently used by the appellant upon the final hearing of the habeas corpus proceeding.

The final hearing set for the 20th of November, 1916, was adjourned to the 21st of November and on that date the appellant, without offering any of the depositions taken in Chicago or Los Angeles, and without having taken the depositions in Charleston, and after proof had been presented by the State of Illinois of the physical presence of the appellant in the City of Chicago, in the State of Illinois, upon the dates mentioned in the indictments as the dates when the crimes alleged therein had been committed, submitted the proceedings to the Court for final determination and the Court thereupon dismissed the writ of habeas corpus, but continued the appellant upon bail pending the preparation of the papers on appeal to this Court and the signing of a final order dismissing the writ of habeas corpus.

At no time during the habeas corpus proceedings did the appellant make any claim that the papers upon which the requisition and warrant of extradition had been granted, were faulty, nor that the indictments did not charge crimes, and the State of Illinois produced affirmative proof which was uncontradicted showing that the appellant was a fugitive. The appellant's main point was that the crimes had been barred by the Statute of Limitations of the State of Illinois and the Court declined to try that question in a habeas corpus proceeding holding that the courts of the demanding state were the proper forum for the trial of that question.

On December 7, 1916, the final order dismissing the writ was signed, notice of appeal to this Court was served, and a citation was issued, returnable January 6, 1917. The Court admitted the appellant to bail pending the appeal, which he immediately gave, and he has been at large upon said bail to this date.

The appellant failed to file his papers on appeal by January 6, 1917, and did not, in point of fact, file the same in the office of the Clerk of this Court until the 6th day of March, 1917.

The situation, therefore, is that the appellant, by the various steps hereinabove outlined, taken, as I believe, solely for the purpose of delay, has succeeded in tying the hands of the State of Illinois by the appeal to this Court, and will succeed in paralyzing the power of that State to prosecute him for the crimes charged against him for at least a year because, as I am informed by the Clerk of this Court, this case cannot be reached on the regular call of the docket of this Court for about a year, unless the relief herein respectfully prayed for should be granted.

I beg leave to annex hereto the affidavit of Henry A. Berger, an assistant in the office of the State's Attorney of Cook County, Illinois, where said indictments are pending, to show how the interests of the State of Illinois have suffered by the delay and how further delay might make it impossible for that State to ever bring the appellant to trial.

For the reasons, therefore, that the interests of the State of Illinois are vitally involved in that the machinery of its criminal courts is stayed by this appeal; because this habeas corpus proceeding arises in the prosecution of a criminal action and should, therefore, be advanced in accordance with Subdivision 3 of Rule XXVI of the Rules of this Court; because the questions on which the decision of the cause depends are so frivolous as not to require further argument; and because the appeal has been taken for delay only, I respectfully pray for an order advancing this cause for argument and fixing an early date when the same may be argued.

ISIDOR J. KRESEL.

Sworn to before me this
29th day of March, 1917.

BEATRICE B. HARTMAN,
Notary Public,
Kings Co. No. 120.
Cert. filed in N. Y. Co. 320.
Seal.

SUPREME COURT OF THE UNITED STATES.

IN THE MATTER of the Application of GUY B. BIDDINGER, for release from imprisonment upon a writ of habeas corpus.	October Term. 1916. No. 973.

CITY OF CHICAGO,
County of Cook,
State of Illinois, } ss.:

HENRY A. BERGER, being duly sworn, deposes and says:

I reside at No. 5233 Michigan Avenue, in the City of Chicago, State of Illinois. I am attorney and counsellor at law, admitted to practice in the Courts of the State of Illinois. I am now, and during all the times hereinafter mentioned have been, an assistant in the office of the State's Attorney of Cook County, State of Illinois, and have assisted in the prosecution instituted on behalf of the People of the State of Illinois against Guy B. Biddinger. I have at all times been familiar with the steps taken in said prosecution, and in the effort of the State of Illinois to have said Guy Biddinger extradited from the State of New York to the State of Illinois.

About the 10th day of May, 1916, I attended before the Governor of the State of Illinois, in the City of Springfield, on behalf of the State's Attorney of Cook County, upon the application made by said State's Attorney to said Governor, for a requisition upon the Governor of the State of New York for the

extradition of said Guy B. Biddinger to the State of Illinois.

On the 23rd day of June, 1916, I was present in the City of Albany, in the State of New York, before the Governor of the State of New York in an effort to obtain the extradition of said Guy B. Biddinger.

My associate, Irwin N. Walker, has likewise from time to time appeared before said Governor of the State of New York for the purpose of obtaining said extradition, and Mr. Maclay Hoyne, the State's Attorney himself, as well as his assistant, Frank Johnston, have appeared before the Governor of the State of Illnois in this matter.

During the May, 1916, Term of the Criminal Court of Cook County, the Grand Jury of said County found and filed in said Court six indictments against said Guy B. Biddinger, in four of which indictments he is charged with the crime of accepting bribes while a member of the police force of the City of Chicago; by the fifth indictment he is charged with larceny and obtaining money by means of the confidence game; and by the sixth indictment he is charged with the crime of permitting a prisoner, whom he had in custody as a police officer of the City of Chicago, to escape from such custody.

Said Biddinger has never been arraigned upon any of said indictments and has not pleaded thereto. All efforts made by the State of Illinois to extradite him from the State of New York have thus far been of no avail, and the appeal now pending in this Court from the order of the United States District Court for the Southern District of New York, dismissing a writ of habeas corpus sued out to release said Biddinger while in custody under a warrant of extradition granted by the Governor of the State of New York, has made it impossible for the State of Illinois to proceed with the prosecution of said indictments.

The State of Illinois must depend upon its success in these prosecutions upon witnesses who have no permanent occupation or abode, and of whose movements and whereabouts it is most difficult to keep track.

It will appear from the nature of the charges against this appellant that the crimes of which he is charged were committed by him while a member of the police force of the City of Chicago, by accepting bribes from pickpockets and thieves, to permit them to ply their trade, and that he had arrangements with such criminals whereby he would share in the proceeds of their crimes.

It must be evident, therefore, that some of the very persons upon whom the State must rely for its proof against the appellant, are disreputable characters, who might be easily influenced by ulterior motives and pecuniary compensation, to leave the jurisdiction of the Court wherein said indictments are pending, or otherwise delay the prosecution of these indictments, or even make it impossible to proceed therewith.

Up to the present time the State's Attorney has been enabled, with a very great deal of effort, to keep these witnesses within the jurisdiction, and he has at all times been ready to proceed with the trial of these indictments, but has been delayed by the Appellant's efforts to prevent his extradition.

If the State of Illinois should be unable to bring this appellant within its jurisdiction until the appeal in this Court should regularly be reached for argument upon the calendar, and, I am informed and verily believe that it can not be regularly reached for a period of about a year, then I believe that long before that time the State's witnesses against the appel-

lant would be scattered, or tampered with, and the prosecution would be absolutely made impossible.

HENRY A. BERGER.

Sworn to before me this
28th day of March, 1917.

HARRY C. SHUGART,
Notary Public.
My Commission expires November, 1920.
Seal.

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FILED
APR 7 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States

No. 426—October Term, 1916.

In the Matter

of

The Application of GUY B. BIDDINGER for Release from Imprisonment upon a Writ of Habeas Corpus.

Affidavit in Opposition to Motion to Advance.

House, Grossman & Vorhaus,
Charles H. Griffith,
Attorneys for Appellant,
115 Broadway and 120 Broadway,
Borough of Manhattan,
New York City,
New York.

Moses H. Grossman
Charles H. Griffith
of Counsel

Supreme Court of the United States

In the Matter of the application of GUY B. BIDDINGER for release from imprisonment upon a writ of habeas corpus.	October Term, 1916. No. 973.

United States of America,
State of New York,
County of New York, } ss.:

GUY B. BIDDINGER, being duly sworn, deposes and says: I was appointed a member of the Police Department of the City of Chicago on January 21st, 1903. I remained continuously in such employment, being promoted from time to time, until I resigned from the Department on January 25th, 1914.

To be a member of such Police Department one must be a resident of the City of Chicago. I was a resident of the City of Chicago for many years prior to and at the time of my appointment and continued to be a resident for seven months after my resignation, viz., until August 21st, 1914, when I moved to New York.

The indictments were found by the Grand Jury at the May, 1916, Term of the Criminal Court of

Cook County, and charged offences alleged to have been committed by me on October 15th, 1908, October 30th, 1908, February 15th, 1909, May 15th, 1910, and September 2nd, 1910.

The Statute of Limitations in Illinois is eighteen months for misdemeanors and three years for felonies. The Statute provides that no indictment can be found after such period, except where one has not been usually and publicly a resident of the State. The earliest charge is October 15th, 1908, and the latest is September 2nd, 1910. My last promotion in the Police Department (from detective to first class detective-sergeant) took place on October 11th, 1913, which is more than three years after the latest charge, so that all of the alleged crimes are clearly barred by the Statute. I did not resign from the Department until January 25th, 1914, my resignation having been accepted on the following day.

On April 10th, 1911, William J. Burns, the detective, asked the Chief of the Police Department in Chicago to give him his best man in a most important criminal case in which California, Illinois and other States were concerned. As I then and for ten previous years headed the Efficiency List in the Detective Bureau of the Police Department of Chicago, I was loaned, so to speak, to Detective Burns, and directed to arrest the Los Angeles dynamiters McNamara, MacManigal and others, which I did, personally taking them to California for trial. I was engaged in that work for about a month. I returned to Chicago on May 10th, 1911, and duly attended to my police work in that city until August 1st, 1911, when I was again borrowed from the Police Department by Mr. Burns, for

which reason I obtained a furlough or a leave of absence for four months. My work was so successful that he desired me further and I obtained furloughs from time to time thereafter until my final resignation. Detectives thus employed by the Police Departments of Chicago and other large cities are often sent to other states in police matters and temporarily loaned to detective agencies employed to ferret out crimes and make arrests. Each furlough and leave of absence was granted upon my written application, which had to be and was personally presented by me to the Chief of Police. During this period my monthly salary was paid frequently to me and sometimes to Mr. Burns by the Police Department until my resignation in 1914, but Mr. Burns reimbursed the Department for such salary when he used me in criminal cases on behalf of others than the State of Illinois. I was always under the call and recall of the Chief of Police of Chicago, who knew where I was, and under whose orders I continued to be, until my resignation was a pted.

The indictments against me were inspired and procured by one Weil of Pittsburgh, Pa., under these circumstances:

In January, 1915, Weil was indicted by the Grand Jury of Kanawha County, W. Va., principally upon my testimony, for Attempted Bribery of Public Service Commissioners. He went to Chicago and procured fifty-one complaints of crime to be filed against me before a Municipal Court Judge in Chicago in April, 1916, upon which a requisition for my extradition was made by Gov. Dunne upon Gov. Whitman of New York.

I was apprehended under a warrant of extradition, whereupon a hearing was had before Gov. Dunne, at the conclusion of which hearing, on April 22nd, 1916, he revoked his requisition, saying what is embodied in the ninth offer of proof hereinafter set forth. On April 28th, 1916, Governor Dunne wrote Governor Whitman a letter, saying:—

> "At the written request of Governor Hatfield of West Virginia, I gave an extended hearing to the attorney of the State of Illinois, the attorney of the State of West Virginia and the attorney for Guy B. Biddinger yesterday and the day before in Chicago, and after full and careful consideration of all of the issues involved, I reached the conclusion that it was my duty, as Governor of the State of Illinois, to recall the requisition heretofore issued by me and addressed to you for the extradition of Guy B. Biddinger."

Thereafter these six indictments were found, based upon some of the fifty-one complaints above referred to, and a second requisition having been made, I was again arrested upon an executive warrant on June 8th, 1916, and sued out this writ of habeas corpus.

At the first hearing before Gov. Whitman I demanded the production of Weil as a witness in my behalf, but, although Weil was at the Ten Eyck Hotel, near the Executive Chamber where the hearing was held, his counsel refused to produce him and he did not appear as a witness. I charged him with bad faith and with having inspired, initiated and financed this prosecution for private purposes

and personal ends, and with the object of defeating the justice of the State of West Virginia and preventing me from appearing as a witness on the trial of the indictments found against him. I was ready to prove these facts out of the mouth of Mr. Weil himself, but he refused to attend, and as no subpoena can be obtained to compel the attendance of witnesses at such executive hearing, which is a mere matter of courtesy, I was deprived of the benefit of his testimony. I did, however, prove that, of the fifty-one charges of crime, three were separate charges made by three different men who were concededly self-confessed professional criminals and ex-convicts, each of them utterly uncorroborated and their statements disproved, while the other forty-eight charges were all made by one Singleton, who not only had no personal knowledge of the facts but was wholly unacquainted with me and had never seen me at any time in his life until the day I appeared at this hearing in Albany. Yet it was this very man Singleton who, upon the present extradition proceedings, furnished the affidavit of fugitiveness, alleging that on May 10th, 1911, I fled from the State of Illinois, although I was daily in Chicago for a considerable time thereafter, daily attending to police business there, and made several arrests in the City of Chicago and in other States on extradition proceedings for several months after May, 1911.

After the first executive warrant was vacated by Gov. Whitman upon the withdrawal by Gov. Dunne of his requisition, and these six indictments, upon similar charges, were then found, I had, of course, no way of going behind the indictments and attacking the testimony, and so I was limited to the con-

tention of bad faith, which was perfectly apparent, and the Statute of Limitations which barred the indictments, and to proof of non-fugitiveness by evidence that I was actually and publicly a resident of Illinois and a member of the Police Department continuously from 1903 until I resigned from the Department on January 25th, 1914, and continued my residence for seven months after such resignation viz., August 21st, 1914, when I moved to New York.

At great expense I took the depositions of about forty witnesses in Illinois and several witnesses in Los Angeles, California, and intended taking the testimony of Weil in Pittsburgh and of Gov. Hatfield and others in West Virginia; but a ruling having been made by the Judge of the District Court that the only question in this case was whether or not I was physically corporeally present in the demanding State at the time of the commission of the alleged crimes, it became obviously unnecessary for me to take the depositions in Pennsylvania and in West Virginia or to introduce the depositions which had already been taken in Illinois and in California.

The Court distinctly stated that the evidence, if offered, would be excluded. The suggestion was made that brief offers of proof be given in lieu of the depositions and that my rights, by exception, would be preserved. This I accordingly did and I made the following offers of proof which were excluded:

> (1) "That the relator, Guy B. Biddinger, has been openly and publicly and usually a resident within the State of Illinois during

all of the times mentioned in the indictments and for at least twelve years prior to and up to, continuously, August 15, 1914."

(2) "That during the period from 1900 up to and including January, 1914, the relator, Guy B. Biddinger, was employed successively as a patrolman, detective and detective-sergeant of the Police Department of the City of Chicago, State of Illinois, having been appointed some time in 1900, we will say (it may have been a year or two prior to that), and having served continuously as a member of the Police Department of the City of Chicago until January 25, 1914, when he submitted his resignation as a member of the Police Department, which resignation was accepted and went into effect on January 26, 1914.

That during all of that time he was subject to the call of such Police Department for service, and that during his furloughs or temporary absences from Chicago in that period of time, he was absent on police duty with the knowledge and consent and approval of the Police Department of the City of Chicago, through its superior officer, subject to the call and recall of the head of the Police Department, and that whenever so recalled to Chicago by the Police Department, he did appear in Chicago, and that he openly and publicly appeared in that city during the years 1911, 1912, 1913, 1914 and 1915."

(3) "That at the time of the appearance of Guy B. Biddinger, the relator, during his employment in the Police Department, in Chi-

cago, Illinois, as aforesaid, the relator called upon his superior officers in the Police Department, and that they at all times knew where to find him and where to address him and where he was, so that he could be recalled by them at any time."

(4) "That the relator, Guy B. Biddinger, did not leave the City of Chicago or the State of Illinois either in May, 1911, or at any other time with the intent or purpose to flee or escape from any charge or indictment, or prosecution for the crimes alleged in these indictments, or for any other crime whatever, and that his absences from Chicago and his leaving there were always on police and official business and for the purpose of detecting crime and apprehending prisoners."

(5) "That no evidence was offered either before the Grand Jury prior to the filing of these indictments or at any time, that no evidence was offered to the Governor of the State of Illinois, that no evidence was offered to the Governor of the State of New York, to prove that the relator was not a resident of the City of Chicago or the State of Illinois; that no evidence was offered to show that he was not usually and publicly a resident of the State of Illinois during the period in the years 1911, 1912, 1913 and 1914; nor was any such evidence offered covering any other period of time, and no evidence was offered before any of these tribunals to show or attempt to show that Biddinger did not openly and publicly reside in the City of Chicago, State of Illinois, dur-

ing the periods aforesaid; that no evidence was offered to show that he was not employed in the Police Department, or was not subject to the call or re-call of the Police Department, and no evidence was offered to show that he did not, when called upon by his superiors in the Police Department, respond to such call and present himself to the Police Department in the City of Chicago, Illinois."

(6) "That the prosecutions and indictments in Illinois, for which the relator's extradition to that State has been directed by the warrant of the Governor of the State of New York, were instituted maliciously, without probable cause, in bad faith, and to serve private and personal ends, and not for the real or genuine purpose of trying Mr. Biddinger for any real crime that he is claimed or alleged to have committed."

(7) "That at the time of the appointment of any person as a member of the Police Department of the City of Chicago and State of Illinois, he must be, and during the term of his employment thereafter, must always remain, a citizen of the State of Illinois, and an actual resident of the City of Chicago, in that State."

(8) "That on the 25th day of November, 1913, Biddinger was duly promoted and advanced by the head of the Police Department of the City of Chicago, State of Illinois, from the position of detective to that of detective-sergeant."

(9) "That at a public hearing upon an application for the withdrawal of the requisition

for Biddinger's extradition from New York, held before Governor Dunne of Illinois on April 22nd, 1916, the Governor of Illinois, in deciding to withdraw his then pending requisition for the extradition of Biddinger from the State of New York, made the following statements, which are a part of the record:

That it appears that Biddinger was indicted for crimes committed five to eight years ago in the State of Illinois, at the instance of A. Leo Weil, the defendant in a criminal prosecution in West Virginia; that he did not think one State should step in and interfere with the legal proceedings being conducted in another State, unless there will be great injury to that State; that he did not see any great injury to the State of Illinois in recalling the requisition and reissuing it at the proper time, that is, after the West Virginia proceedings against Weil are disposed of; that Biddinger can be secured by the State of Illinois at any time that State wants him, and that after the criminal proceedings against Weil are disposed of in West Virginia, this writ of extradition can be directed to any Governor of any State in the United States; that this is a very serious charge, of enormous value to the community in West Virginia, against Weil; that the charges against Biddinger in Illinois are police grafting, petty in comparison with the charges in West Virginia, which is attempting to bribe officials of that State, members of the Public Service Commission, one of the most important bodies of that State, and that he did not think he ought to step in and interfere in any way in that proceeding; that after mak-

ing these statements and rendering the opinion and the decision aforesaid, Governor Dunne ordered his requisition withdrawn."

(10) "That the Governor of West Virginia, by several communications addressed to Gov-or Dunne of Illinois, and to Governor Whitman of New York, sought to prevent the extradition of the relator, Biddinger, or at least the suspension of the Executive Warrant, upon the grounds urged by him, that Biddinger was an indispensable witness in the prosecution of the indictments against said Weil in West Virginia, and that Governor Hatfield would and did guarantee that the said Biddinger would surrender himself to the jurisdiction of the State of Illinois, or of the State of New York, whenever required, after having testified in such criminal proceedings in West Virginia, and thereunto he pledged his personal honor and the integrity of the State of West Virginia."

(11) "That Governor Dunne of Illinois did state to Governor Whitman of New York that if Governor Whitman signed the warrant of extradition, Governor Dunne had the promise of the State's Attorney of Cook County that Biddinger would not be tried in Illinois until Weil's case had been tried in West Virginia. Upon this statement by Governor Whitman, Biddinger offered to give and now offers to give a surety company bond or cash bail in whatever amount might be required, to answer to the indictments found against him in Illinois, but the State's Attorney of Cook County, Illinois, refuses to accept surety com-

pany bail or cash bail or to enter into any stipulation or agreement not to try Biddinger until after Weil had been tried, but stated that he would try Biddinger immediately or at any time he saw fit."

The first of the reasons given for this motion is that the interests of Illinois are suffering by the delay. The best answer to this was given by Governor Dunne of Illinois himself in revoking the first requisition. As Illinois delayed many years before she indicted me, she is not likely to be prejudiced by a brief delay in my trial.

The second reason for this motion is that it is manifest that the appeal has been taken by me for delay only. This is absolutely untrue. The appeal is taken in good faith. The Judge of the District Court gave me a certificate of probable cause because there were conflicting opinions upon the question presented (Bruce vs. Raynor, 124 Fed. R., 481, and Reed vs. United States, 224 Fed. R., 378) and it was desired to have the question finally determined by this Court.

I contend that where it clearly appears that the crimes charged are barred by the Statute of Limitations and the Statute forbids the finding of such indictments, the evidence to prove these facts is admissible. And though evidence of actual residence during such period constitutes an affirmative defense to the indictments, I claim the right to offer it, not simply for the purpose of proving the statute has run, but for the primary purpose of showing that I am not a fugitive from justice, having remained in the demanding state for a long time after the crimes had been barred.

It was claimed and the Court held, that fugitiveness is established by proof of the charge of crime and of physical presence. I claim that such proof raises merely a presumption of fugitiveness, which is, by no means, conclusive, and that evidence rebutting such presumption should be admitted. I also claim that where it is perfectly obvious that the evidence of fugitiveness is false and untrue, and it appears clearly that the prosecution is instituted in bad faith and for personal and private ends and that no conviction can be had, that the writ of habeas corpus should be sustained. I claim that the Judge of the District Court is not a mere ministerial officer, but that the duty is imposed upon him by Section 763 of the United States Statutes "to dispose of the prisoner as law and justice require"; and where the justice of the cause is obviously with the relator, he is entitled to the Court's protection, and should not be sent away from his home and friends and suffer untold hardships in order to undergo a merely formal discharge.

The third reason given is that this habeas corpus proceeding is in the nature of a criminal case, in that it arose in the course of a criminal prosecution. It was held by this Court in the *Matter of TOM TONG, Petitioner*, 108 U. S., 556:

> "When there is a criminal prosecution against one, a writ of habeas corpus which he has obtained to inquire into the legality of his detention thereon, is not a proceeding in that prosecution, but is a new suit to enforce a civil right." (Syllabus.)

I have no desire to delay the hearing of this case, but I have no available means at present with

which to pay the cost of printing the record and the necessary costs and expenses of appeal. I have practically exhausted whatever moneys I had in defending myself in the proceedings heretofore had. I am now employed and shall be able, if this appeal is heard in its regular order, to accumulate the moneys with which to employ counsel and meet the necessary expenses of the appeal, if given an opportunity to do so. If this motion should be granted, and the appeal is ordered to be heard at once, it would be extremely difficult, if not impossible, for me to perfect the appeal, as I have no present means with which to print the record. That is my only reason for asking that this case take its regular course and be heard in its regular order. The State of Illinois, which has waited so many years, cannot be prejudiced thereby, but irreparable injury—involving, perhaps, the abandonment of my appeal—may result by giving her the preference and advantage which she now seeks.

GUY B. BIDDINGER.

Sworn to before me this
6th day of April, 1917.

ALFRED LYONS,
Notary Public,
New York County.

FILED
SEP 11 191
JAMES D. MA

No. 425.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

GUY B. BIDDLECOM

v.

THE COMMISSIONER OF POLICE OF THE CITY OF NEW YORK.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT.

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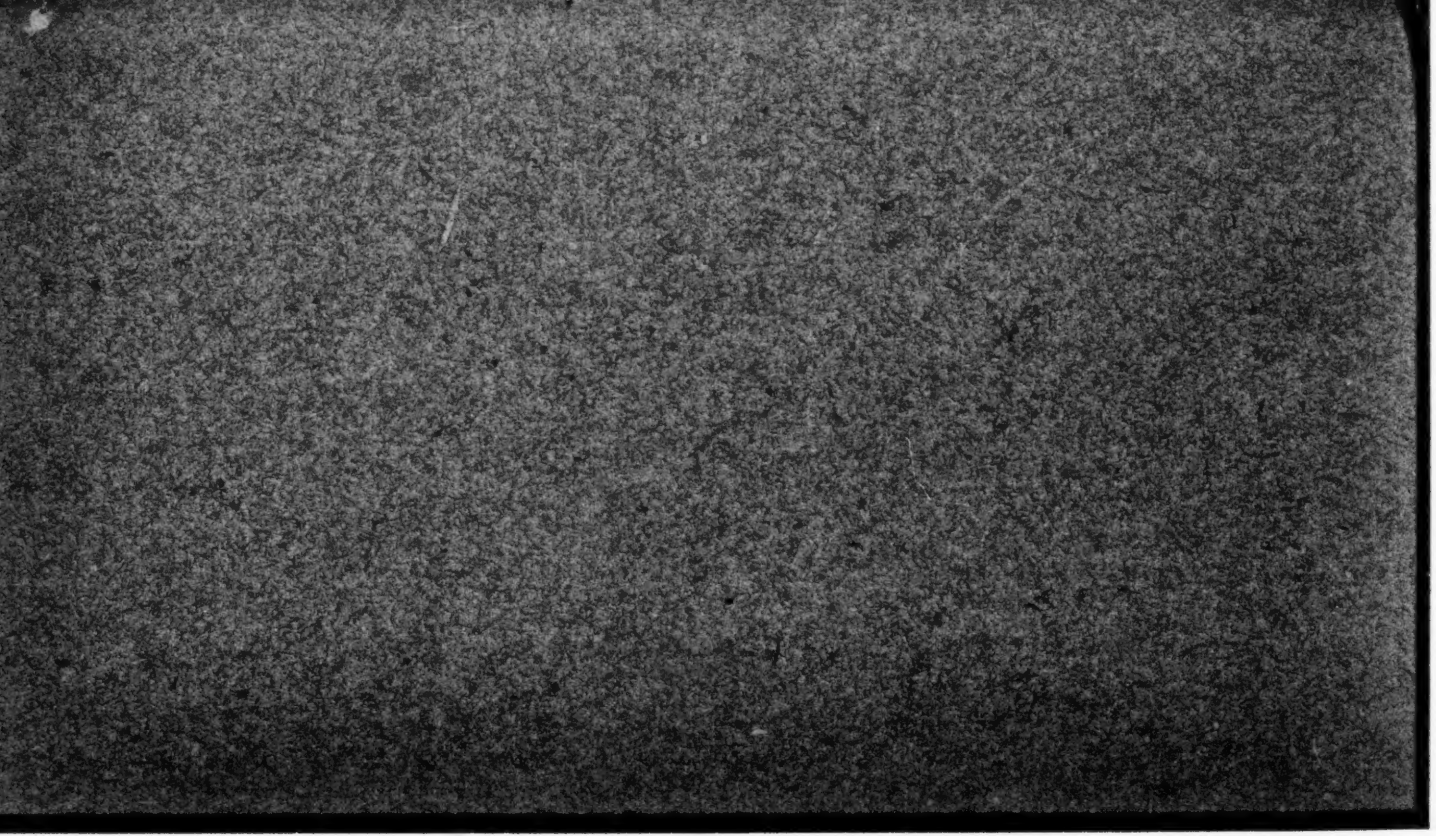

SUBJECT INDEX.

PAGE

Statement of the Case 1
Errors Relied Upon 5
Evidence Offered and Excluded 7
Statement of the Cases of Reed v. U. S. and Bruce v. Rayner 9
Outline of Appellant's Points 13

POINT I:

The decision below overlooks the meaning of the words "flee" and "fugitive" 15

POINT II:

The decision appealed from overlooks the purpose and history of the constitutional provision. 24

POINT III:

The decision appealed from is inconsistent with settled law upon analogous points 30

POINT IV:

The weight of authority on the precise point is against decision below 43

POINT V:

Scattered decisions upon which Court below relies are clearly erroneous in principle 52

POINT VI:

Conclusion 63

TABLE OF CASES CITED.

PAGE

Appleyard v. Massachusetts, 203 U. S., 222, 231
13, 15, 19, 21, 22, 24, 26, 51, 54, 57
Bassing v. Cady, 208 U. S., 386..... 55
Bruce v. Rayner, 124 Fed., 481
2, 9, 10, 12, 13, 14, 15, 24, 30, 43, 44, 45, 46, 50, 52, 63
Bruce, *In re*, 132 Fed., 390..... 50
Case of Certain Alleged Fugitives from Justice, 24
Am. Jur., 226, 229..... 26
Commonwealth v. Trach, 3 Pa. Co. Ct., 65, 67.....21, 51
Cook, *In re*, 49 Fed., 833, 842, aff'd 146 U. S., 183..32, 62
Cook v. Hart, 146 U. S., 183..... 32
Dennison v. Christian, 72 Neb., 703, aff'd 196 U. S.,
637 .....44, 45-46, 49
Depoilly v. Palmer, 28 D. C. App., 324.....43, 52, 57-60
Edmunds v. Griffin (Iowa), 156 N. W., 353..... 60
Edwards, *Ex parte* (Miss.), 44 So., 8276..... 60
Fetter, Matter of, 3 Zab., 311, 57 Am. Dec., 396n..21, 25, 51
Gaffigan's case, 2 Moore Extradition, 898..... 49
Georgia-Maine Controversy, 2 Moore Extradition
890 .....14, 19, 30, 31
Goodale v. Splain, 42 D. C. App., 235..... 43
Hackney v. Welsh, 107 Ind., 253..... 35
Hayes v. Palmer, 21 App. D. C., 450, 462..... 60
Hoffstot, *Ex parte*, 180 Fed., 240, aff'd 218 U. S., 665.. 33
Hoffstot v. Flood, 218 U. S., 665..... 33
Howgate v. U. S., 7 App. D. C., 242..... 58
Hyatt v. Corkran, 188 U. S., 691
14, 16, 22, 30, 32, 33, 37n, 39-40, 42, 54, 55-56, 54, 59, 60, 62
Innes v. Tobin, 240 U. S., 127.....35-37, 57
Jackson, *In re*, 2 Flip., 183..... 37n
Johnson v. Ammons, 6 Ohio Dec., 608; Dec., 747....21, 51
Jones v. Leonard, 50 Iowa, 106..... 33
Kemper v. Metzger, 169 Ind., 112..... 46
Kentucky v. Dennison, 24 How., 66.....18, 25, 29
Kingsbury's Case, 106 Mass. 223.....22, 57
Kuhns, *In re*, 36 Nev., 487.....44-45

PAGE

Larney, *Ex parte,* 4 Ohio N. P., 304.....60
Leary's Case, 6 Abb. N. C., 43, 68..... 59
McNichols v. Pease, 207 U. S., 100.....54, 62
Marbles v. Creecy, 215 U. S., 63..... 54
Merrick's Case, 2 Moore, Extradition, p. 898..... 49
Mitchell, Matter of, 4 N. Y. Cr., 596, 601..... 32
Mohr, *In re,* 73 Ala., 503..... 33
Munsey v. Clough, 196 U. S., 364.....48-49
Opinion of Attorney General Randolph 16, 29
Patterson's Case, Spear, Extradition, 385....14, 30, 38, 41
Pearce v. Texas, 155 U. S., 311..... 49n
Pennsylvania-Virginia Controversy 29
People ex rel. Corkran v. Hyatt, 172 N. Y., 176, aff'd
188 U. S., 691 .....32, 40-41, 56-57, 60
People v. Kuhn, 67 Mich., 463.....21, 51
People v. McLaughlin, 145 N. Y. App. Div., 513...60, 62
People v. Sennott, 20 Alb. L. J., 230..... 35
Pierce v. Creecy, 210 U. S., 387..... 49n
Randolph, Opinion of Attorney General 16, 29
Reed v. U. S., 224 Fed., 378
2, 7, 9-10, 13, 14, 15, 24, 30, 43, 52-57, 58
Robb, *In re,* 19 Fed., 26, rev'd 111 U. S., 624..... 61
Robb v. Connolly, 111 U. S., 624, 637..... 61
Roberts v. Reilly, 116 U. S., 80.....19, 56, 62
Ryan v. Rogers, 21 Wyo., 311..... 60
Shoemaker, *In re,* 25 Cal. App., 551.....41, 60
State v. Clough, 71 N. H., 594.....21, 47-48, 51
State v. Clough, 72 N. H., 178..... 48
State v. Hall, 115 N. C., 811..... 33
State v. Schlemn, 4 Harr. (Del.), 572, 577..... 61
Streep v. U. S., 160 U. S., 128.....19, 58
U. S. v. Rauscher, 119 U. S., 407, 417..... 31
Voorhees, Matter of, 32 N. J. L., 141
13, 15, 20, 22, 50, 51, 57
White, *Ex parte,* 55 Fed., 54.....21, 51
Wilcox v. Nolze, 34 Ohio St., 520..... 33
Willard, *Ex parte,* Spear Extradition, 460..... 61

Table of Constitutions and Statutes Cited.

PAGE

Articles of Confederation, Art. IV, Sec. 2..... 25
Constitution of U. S., Art. IV, Sec. 2, Clause 2
15, 24, 25, 27, 28
Illinois Revised Statutes, Secs. 313-317 4
U. S. Compiled Statutes, 1916, Sec. 10126..... 16
U. S. Revised Statutes, Sec. 5278..... 16
U. S. Session Laws, Act of Feb. 12, 1793, C. 7, Sec. 1.. 16

Table of Text Books Cited.

Am. Dec., Vol. 57, p. 396.....21, 25, 51
Am. & Eng. Encyc. L. (Tit. Extradition) Vol. 12, p. 602 .....21, 51
Amer. State Papers, Vol. XX, Class X, 1 Misc., pp. 41-43 .....16, 29
California Law Review, Vol. III, p. 236..... 41
Century Dictionary, Vol. IV, p. 2263..... 17
Church, Habeas Corpus (2nd Edition, 1893), 816....21, 51
Columbia Law Review, Vol XVI, p. 522..... 37
Cooley, Thos. M., "The Surrender of Fugitives from Justice," 7 Am. L. Rec., 714, 722.....21, 51
Cyc. Law & Pro. (Tit. Extradition), Vol. 19, pp. 94-95 62
Dunham, Charles, Rendition of Fugitives from Justice. Proceedings of Illinois State Bar Association for 1881, pp. 52, 54.....23, 50
Elliott's Debates, Vol. 5, p. 487 25
Harvard Law Review, Vol. 17, p. 427; Vol. 18, p. 229
49n, 50, 59, 60
Hoague, I. T., Extradition between the States, 13 Am. L. Rev., 181, 196..... 29
Hurd, Habeas Corpus, 606 16
Lindsay, Extradition in the American Colonies, 1893 25

PAGE

Madison's Papers, Vol. 3, p. 1447 25

Moore, J. B. The Difficulties of Extradition, 1 Academy of Pol. Science No. 4 25

2 Moore Extradition, 500, 887, 890, 892, 894, 898, 899 .....14, 19, 21, 26, 30, 31, 38, 49, 50, 51

Murray's "New English Dictionary," Vol. IV, Part i, pp. 308-309 .....17, 20

Scott, Interstate Rendition (1917), Sec. 50 21

Spear, Extradition (2nd Ed.), pp. 380, 383, 384, 385, 399, 460, 467 .....14, 16, 21, 30, 31, 34, 38, 41, 51, 61

Thornton, W. W. "Fugitives from Justice—Some Points of Practice," 3 Cr. L. Mag., 787, 805....21, 51

To be argued by
WALTER H. POLLAK,
MOSES H. GROSSMAN.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

GUY B. BIDDINGER,
Appellant,

against

THE COMMISSIONER OF POLICE OF THE CITY OF NEW YORK,
Appellee.

No. 426

BRIEF FOR APPELLANT.

Appeal from the District Court of the United States for the Southern District of New York.

The appellant, having been committed for extradition from New York to Illinois, pursuant to an executive warrant of Governor Whitman, obtained a writ of habeas corpus (p. 4). This writ was, after a hearing, vacated by the District Court (AUGUSTUS N. HAND, *D.J.*) (p. 253). Pursuant to leave (p. 254), this appeal was then taken (p. 255).

The Question Involved.

The present appeal presents a simple and a single issue, an issue upon which two Circuit Courts of Appeals

have divided and upon which this Court has not spoken. Biddinger is a prisoner arrested by the authorities of the State of New York for extradition to Illinois upon the requisition of the Governor of that state. The most recent of the alleged crimes upon which Biddinger is sought was over five years old when the indictment was found. The applicable statute of Illinois prescribes an eighteen months' or a three years' limitation accordingly as Biddinger's alleged offenses be considered as misdemeanors or as felonies. Biddinger offered proof that he remained in Illinois openly and publicly a resident of the state for more than three years after the latest date on which he is said to have offended. This evidence Judge AUGUSTUS HAND refused to receive. Biddinger argues that the learned Judge *should* have received it; it was offered not to establish any defense to the prosecution, but to show that the appellant had not fled from justice.

The issue is then, whether one who remains openly and publicly a resident of the jurisdiction whose laws he is alleged to have violated throughout all the period in which he can successfully be prosecuted by the authorities of that jurisdiction—and who leaves the jurisdiction only when he can manifestly not be successfully prosecuted—can be said to have fled from justice. The Circuit Court of Appeals for the Ninth Circuit held in the case of *Reed* v. *United States* (224 Fed., 378), which Judge HAND followed, that any one who at any time leaves a jurisdiction after having violated its laws is a fugitive and that proof of residence throughout the whole statutory period is inadmissible. The Circuit Court of Appeals for the Fourth Circuit, however, in an opinion which Judge HAND repudiated, came to the opposite conclusion upon identical facts: It was error, that Court ruled, to exclude evidence of continuous and public residence within the demanding state until after the statute of limitations had run (*Bruce* v. *Rayner*, 124 Fed., 481). While, as we have

seen, Judge HAND held with the Circuit Court of Appeals for the Ninth Circuit, and denied the application for appellant's release (p. 253), he nevertheless "certified that in the opinion of this Court there exists probable cause for an appeal from the said final order of dismissal herein to the Supreme Court of the United States" (p. 255).

Statement of the Case.

We have stated the issue in general terms. In detail the facts are as follows: The indictment against Biddinger was found at the May Term of the Criminal Court of Cook County, Illinois, for the year 1916 (pp. 60, 63, 66, 70, 73, 76). There are several charges against him—for bribery (pp. 62-63, 65-66, 68-69, 71-72); for playing a confidence game (pp. 73-74); for larceny (pp. 74-75), and for permitting a prisoner to escape (p. 76). The two most recent of these alleged crimes—bribery and permitting the escape—are charged to have been committed on September 2, 1910, and were five and one-half years old when the indictment was found (p. 59, petition for requisition addressed by Maclay Hoyne, State's Attorney for Cook County, Illinois, to Governor Dunne). The other crimes are charged to have been committed respectively on May 15, 1910, February 15, 1909, October 30, 1908, October 15, 1908 (p. 59, petition for requisition, *supra;* see also indictment, pp. 60-76). It is in Biddinger's traverse to the return to the writ that he sets forth the theories on which he deems himself entitled to a release. The theories with which we are concerned are the following (p. 7):

> "(c) That a period of more than three years elapsed between the date of the crimes charged in the papers before the Governor and when the said Guy B. Biddinger left the State of Illinois, and the said charges are therefore barred by the Statute of Limitations of the State of Illinois.

(d) That the said Guy B. Biddinger was a resident of the City of Chicago and a resident of the State of Illinois for a period of more than four years after the date of the crime alleged to have been committed by the said Guy B. Biddinger.

(g) That the said Guy B. Biddinger was not and is not in fact a fugitive from justice from the State of Illinois and did not flee from the said State of Illinois, for any purpose, either to this or any other state."

Biddinger's counsel proved without objection the applicable statutes of Illinois. They appear at pages 48-49 of the record, and are as follows:

"Time of commencing prosecutions, limitations, Section 313: For murder or manslaughter. Section 1. An indictment for the crime of murder or manslaughter may be found at any period after the death of the person alleged to have been killed.

Section 314, For arson or forgery. Section 2. An indictment for arson or forgery may be found at any time after the commission of a crime.

Section 315, For other felonies. Section 3. All indictments for other felonies must be found within three years next after the commission of the crime except as otherwise provided by law.

Section 316, For other offenses, etc. Section 4. All prosecutions by indictment or otherwise for misdemeanors or for any fine or forfeit under any penal statute shall be within one year and six months from the time of committing the offense, or incurring the fine or forfeiture, except as otherwise provided by law. (See Section 64, pages 868-869.)

Section 317, Time of absence not counted. Section 5. No period during which the party [was, *sic*] charged was not usually and publicly resident within this state, shall be included in the time of limitation."

Mr. Kresel, representing the State of Illinois, said p. 49):

"The sections just read into the record are Sections 313 to 317, both inclusive, of the Revised Statutes of the State of Illinois for 1913, and were the law of Illinois at the times mentioned in the extradition papers, and are now."

Errors Relied Upon.

The errors relied upon are the following (amended assignment of errors) (pp. 256-261):

XIII. The Court erred in holding as inadmissible evidence offered to prove that the Statute of Limitations of the State of Illinois had run against the several indictments upon which the warrant of extradition is based, and erred in excluding the same.

"XIV. The Court erred in excluding evidence that Guy B. Biddinger had been openly and publicly and usually a resident within the State of Illinois continuously during all the times mentioned in the indictments and continuously for the twelve years preceding August 15th, 1914.

XV. The Court erred in excluding evidence to prove that during the period from 1900 up to and including January, 1914, Guy B. Biddinger was employed successively as a patrolman, detective and detective sergeant of the Police Department of the City of Chicago, State of Illinois, having been appointed some time prior to 1900, and having served continuously as a member of the Police Department of the City of Chicago until January 25th, 1914, when he submitted his resignation as a member of the Police Department, which was accepted and went into effect on January 26th, 1914. That during all of that time he was subject to the call of such Police Department for service, and that during his furloughs or temporary absences from Chicago, during that period, he was absent on police duty, with the knowledge, consent and approval of the Police Department of the City of Chicago, through its superior officers subject to

the call and recall by the head of the Police Department; and that whenever so recalled to Chicago by the Police Department, he did appear there, and that he openly and publicly appeared in that city during the years 1911, 1912, 1913, 1914 and 1915; and that at the time of the appearance of Guy B. Biddinger during his employment in the Police Department in Chicago, he called upon his superior officers in such department, and that they at all times knew where to find him and where to address him and where he was, so that he could be recalled by them at any time.

XVIII. The Court erred in excluding evidence to prove that at the time of the appointment of any person as a member of the Police Department of the City of Chicago, State of Illinois, he must be, and during the term of his employment thereafter must always remain, a citizen of the State of Illinois, and an actual resident of the City of Chicago, State of Illinois.

XIX. The Court erred in excluding evidence to prove that on the 25th day of November, 1913, the relator, Guy B. Biddinger, was duly promoted and advanced by the head of the Police Department of the City of Chicago, State of Illinois, from the position of detective to that of detective sergeant.

XXI. The Court erred in refusing to hold that it affirmatively appears from the papers and from the evidence taken before the Governor that the crimes alleged to have been committed were committed (if at all) from seven and one-half to twelve years ago, and are, therefore, barred by the Statute of Limitations of the State of Illinois.

XXXI. The Court erred in excluding evidence to prove the two sections contained in the Book of Rules and Regulations of the Police Department of the City of Chicago."

XXXIV. The Court erred in holding that the burden of proving affirmatively, in this proceeding, that Guy B. Biddinger is a fugitive from justice, is not on the prosecution, but that the burden

is upon Guy B. Biddinger to prove that he is not a fugitive from justice.

In substance, all these assignments go to a single point, the point, namely, that one is not a fugitive from justice who remains in the jurisdiction whose criminal law he is supposed to have violated, openly and publicly a resident thereof, until the statute of limitations has run, and who thereafter leaves it. He should therefore be permitted to show that he did so remain.

Evidence Offered and Excluded.

The assignments of error make fairly plain, we suppose, the character of the evidence which Biddinger's counsel offered, to which the attorneys for the State of Illinois objected and which the learned trial Judge excluded. At pages 11-12 appears the following:

> "Mr. Grossman (after reading the Statute of Limitations of Illinois): Now, then, I offer to prove, by witnesses having personal knowledge of the fact, that the relator, Guy B. Biddinger, has been openly and publicly and usually a resident within the State of Illinois during all of the times mentioned in the indictments and for at least twelve years prior to and up to, continuously, August 15, 1914.
>
> Mr. Kresel: I object on the ground it is incompetent, irrelevant and immaterial, on the ground that it is a matter of defense which must be heard in the courts of the demanding state and not in the court of this state, or in the Federal courts, upon such a writ of habeas corpus, and on that proposition I call your Honor's attention to the case of *United States* v. *Reed,* with which your Honor is no doubt familiar.
>
> The Court: Yes. Your objection is sustained.
>
> Mr. Grossman: All right, we except, and I assume that our exception is on the record as though the testimony had been actually offered and objected to after the witness had been sworn.
>
> The Court: Yes.

Mr. Grossman: Now I offer to prove that during the period from 1900 up to and including January, 1914, the relator, Guy B. Biddinger, was employed successively as a patrolman, detective and detective sergeant of the Police Department of the City of Chicago, State of Illinois, having been appointed some time in 1900, we will say (it may have been a year or two prior to that), and having served continuously as a member of the Police Department of the City of Chicago until January 25, 1914, when he submitted his resignation as a member of the Police Department, which resignation was accepted and went into effect on January 26, 1914.

That during all of that time he was subject to the call of such Police Department for service, and that during his furloughs or temporary absence from Chicago in that period of time, he was absent on police duty with the knowledge and consent and approval of the Police Department of the City of Chicago, through its superior officer, subject to the call and recall of the head of the Police Department, and that whenever so recalled to Chicago by the Police Department, he did appear in Chicago, and that he openly and publicly appeared in that city during the years 1911, 1912, 1913, 1914 and 1915.

Mr. Kresel: I object to that proof upon the ground, and I want to urge it very seriously, that it is incompetent, irrelevant and immaterial; on the ground that, as bearing on the question of the Statute of Limitations, such a defense should be heard in the courts of the demanding state and not by this court.

The Court: I will sustain the objection.

Mr. Grossman: We except, and it is understood, of course, that our exception is just as valid as though our witnesses had been called and sworn, and the testimony had been actually offered to that effect.

Now I offer to prove that at the time of the appearance of Guy B. Biddinger, the relator, during his employment in the Police Department

in Chicago, Illinois, as aforesaid, the relator called upon his superior officers in the Police Department, and that they at all times knew where to find him and where to address him and where he was, so that he could be recalled by them at any time.

Mr. Kresel: To that I raise the same objection as I previously raised.

The Court: The objection is sustained.

Mr. Grossman: Exception in the same way."

(See similar offers of proof, pp. 45, 48-50.)

The Book of Rules whose exclusion appears as No. 31 in the assignment of errors was offered at pages 49-50. Sections 7 and 8 of the Book of Rules were marked for identification and appear in the record at page 130. They declare that members of the police force "will be considered as being always on duty and must be prepared to respond immediately, day or night, on notice that their services are required." The purport of the rest of the evidence offered and excluded was the same. It went to show that Biddinger remained an official of Chicago—and under the law necessarily a resident of Illinois—until more than three years after the date of even the most recent of his alleged crimes.

Statement of the Cases of Reed vs. U. S. and Bruce vs. Rayner, and Outline of Our Points.

The issue is then squarely drawn between the case of *Reed* v. *U. S.*, upon which the learned Judge below relied, and the case of *Bruce* v. *Rayner*, which he repudiated. We shall, in the course of this brief, return to the consideration of these cases. We may, however, for the convenience of this Court, quote the applicable parts of each opinion. The discussion in *Reed* v. *U. S.* is brief enough. Indeed, the Court does not seem even to have had the

Bruce case called to its attention. Judge GILBERT said (224 Fed., 378, 381-382):

"(7) To the allegation of the petition that the petitioner was not in fact a fugitive from justice it is sufficient to refer to the language of the indictment which charges him with the actual commission of the offense in the state of Iowa. If he was in that state at the time when the offense was committed, he is, whenever he is thereafter found in another state, presumed to be a fugitive from justice, within the meaning of the Constitution and the laws of the United States, no matter for what purpose or reason, or under what circumstances, he left the state. *Appleyard* v. *Massachusetts*, 203 U. S. 222, 27 Sup. Ct. 122, 51 L. Ed. 161, 7 Ann. Cas. 1073; *McNichols* v. *Pease*, 207 U. S. 100, 28 Sup. Ct. 58, 52 L. Ed. 121; *Marbles* v. *Creecy*, 215 U. S. 63, 30 Sup. Ct. 32, 54 L. Ed. 92. That presumption might be overcome by proof that the petitioner was not in the State of Iowa at the time of the commission of the offense alleged. *Hyatt* v. *Corkran*, 188 U. S. 691, 23 Sup. Ct. 456, 47 L. Ed. 657; *Bassing* v. *Cady*, 208 U. S. 386, 28 Sup. Ct. 392, 52 L. Ed. 540; 13 Ann. Cas. 905. No such proof was produced, and although it appears that the order discharging the writ contains the following: 'That the application for leave to introduce evidence herein be and the same is hereby denied'—it does not appear that the evidence so offered was for the purpose of showing that the petitioner was not in the state of Iowa at the time when the offense was alleged to have been committed. On the contrary, it appears from the assignments of error that the testimony was offered by the petitioner for the purpose of showing that he was publicly a resident within the State of Iowa for more than three years after the alleged commission of the crime, 'and was therefore not a fugitive from justice.'

We find no error. The order of the District Court is affirmed."

Judge MORROW concurred. Judge ROSS, in a four-line opinion, concurred in Judge GILBERT'S result without either accepting or rejecting his reasoning.

The discussion in *Bruce* v. *Rayner* is fuller. Bruce's application for a writ of habeas corpus was denied below. From the Court's statement of facts it appears that (124 Fed., 481, 482):

> "The seventh and eighth assignments of error charge errors in the court in excluding testimony offered by the petitioner for the purpose of showing that within the two years succeeding 11th March, 1897, the date charged in the indictment as the date of the alleged offense, the petitioner was a resident of the state of New Jersey, and, except at intervals, when absent on business, was not without the reach of criminal process in said state. And, further, that the petitioner was a resident of the said state of New Jersey, living there, except at intervals, when absent on account of business, prior to said alleged offense, until about December 1st, 1900."

(New Jersey, of course, was the demanding state.)

Judge SIMONTON, with whom GOFF, *C.J.*, and KELLER, *D.J.*, concurred, said (pp. 485, 486):

> "It is stated in the petition of Thomas Bruce that he was living in New Jersey anterior to and at the time of the commission of the crime charged in the indictment, and that he continued to live in the state of New Jersey, occasional absence for business excepted, up to December, 1900. Does this allegation go to the sufficiency of the indictment? Is it a matter of defense, or is it an allegation bearing upon the question, is he a fugitive from justice? The petitioner is indicted for the crime of bigamy under the statute of New Jersey above quoted. The crime alleged is that, being already married to a living wife, he went through the ceremony of marriage with another person. That act constituted the crime. And it is not a continued crime. The cohabitation after the second marriage is not in-

volved in the charge of bigamy. The date of the marriage is essential, for the second marriage, to be a crime, must have been entered into whilst the accused has a wife living. A statute of the same state of New Jersey (Gen. St., p. 1145, Sec. 130) declares as follows: 'Nor shall any person be prosecuted, tried or punished for any offense not punishable by death' (of which bigamy is one), 'unless the indictment shall be found within two years from the time of committing the offense. * * * Provided further, that nothing herein contained shall extend to any person fleeing from justice.' The indictment in this case, as we have seen, was found September term, 1902, and charges bigamous marriage of the petitioner as of the 11th March, 1897. It thus appears that, in order to prosecute, try or punish one charged with bigamy in New Jersey, it must appear that he or she, having a wife or husband living, has been guilty of the act of marriage to another person within two years of the finding of the indictment; and that, unless such indictment is so brought within the said two years, the prosecution will not lie, unless the person accused be a fugitive from justice. Now, we have seen that, to make one a fugitive from justice, it must appear, first, that he was within the state when the crime charged is alleged to have been committed; second, that, being amenable to criminal process, he either concealed himself or avoided it so that he could not be served, or that he departed the state, and so avoided service. If, therefore, it could be shown that he did not conceal himself within the state during the period which he was amenable to criminal process, this would be evidence tending to establish the fact that he was not a fugitive from justice. This testimony would not go to the sufficiency of the indictment, or to any manner of defense; it would be directed solely to the question whether he was a fugitive from justice —a question of fact. The court, as has been seen, can inquire whether the accused was within the state at the date of the alleged crime, and, pursuing its inquiry, it can ascertain if, being within the

> state at that time, he remained within reach of its criminal process during the whole period for which such process could run. If this be established, then it could reasonably be concluded that he is not a fugitive from justice, and so not within the provisions of the Constitution or of the act of Congress. It is not a question of pleading presented to the Court on the trial of the accused, as in *United States* v. *Cook*, 17 Wall. 168, 21 L. Ed. 538, but a question of fact to be disposed of before remanding the accused to the demanding state. He cannot be remanded unless he be a fugitive from justice."

We purpose to show in the course of this brief that the decision in *Reed* v. *U. S.* is unsound, and the decision in *Bruce* v. *Rayner* sound. The argument will proceed in part upon principle and in part upon authority. Specifically we shall develop the following points:

I. The decision in *Reed* v. *U. S.* stands condemned by—and the decision in *Bruce* v. *Rayner* is supported by—a mere consideration of the meaning of words. A fugitive from justice within the constitutional definition is "a person who commits a crime within a state and withdraws himself from such jurisdiction without waiting to abide the consequences of such act" (*Appleyard* v. *Massachusetts*, 203 U. S., 222, 231, quoting *Matter of Voorhees*, 32 N. J. L., 141, 150). One who remains within the jurisdiction during all the time in which he can successfully be prosecuted does abide all the consequences of his act and is not a fugitive.

II. The decision in *Reed* v. *U. S.* stands condemned by—and the decision in *Bruce* v. *Rayner* is supported by—a consideration of the history and purpose of Article IV, Section 2, Clause 2 of the Constitution. "The constitutional provision relating to fugitives from justice, as the history of

its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states" (*Appleyard v. Massachusetts,* 203 U. S., 222, 227). It is inconceivable that the framers of the Constitution contemplated such a result as that attained in *Reed* v. *U. S.* Upon the reasoning there adopted, one might be transported from Maine to California fifty years after the alleged commission of the pettiest misdemeanor even if he had resided openly and publicly in the state whose laws he was supposed to have violated throughout the whole period.

III. The decision in *Reed* v. *U. S.* stands condemned by—and the decision in *Bruce* v. *Rayner* is supported by—settled decisions upon analogous aspects of the law of interstate rendition. Many authorities establish it, that the notion of flight involves two elements, "bodily locomotion" (Spear, *Extradition,* page 380), and bodily locomotion "in some degree connected with the crime" (opinion of Governor KENT in Georgia-Maine Controversy, 2 Moore, *Extradition,* 890). Thus, one does not flee from a jurisdiction who from without its borders sets agencies of crime in motion within (*Hyatt* v. *Corkran,* 188 U. S., 691). Again, one does not flee from a jurisdiction who is "seized and forcibly carried" out of it (Spear, *Extradition,* page 399). So, too, one does not flee from a state who is sent out in pursuance to its direction, for instance, to perform his duties as Senator of the United States (*Patterson's* case, Spear, *Extradition,* 385). Finally, one does not flee from a state who enters it after his crime has been committed and thereafter leaves (*Hyatt* v. *Corkran, supra*).

IV. The decision in *Reed* v. *U. S.* stands condemned by—and the decision in *Bruce* v. *Rayner* is

supported by—the clear weight of text and judicial authority upon the precise topic.

V. The decision in *Reed* v. *U. S.*, the decision by Judge HAND below, and the only other decision anywhere found in accord with them, rest either upon a misconception of the purpose for which the testimony of continuous residence was offered or upon a misapplication of general phrases of this Court, phrases not relating and not purporting to relate in the remotest degree to the question in hand.

POINT I.

The decision in *Reed* v. *United States* stands condemned by—and the decision in *Bruce* v. *Rayner* is supported by—a mere consideration of the meaning of words. A fugitive from justice within the constitutional definition is "a person who commits a crime within a state and withdraws himself from such jurisdiction without waiting to abide the consequences of such act." (*Appleyard* v. *Massachusetts*, 203 U. S., 222, 231, quoting *Matter of Voorhees*, 32 N. J. L., 141, 150.) One who remains within the jurisdiction during all the time in which he can successfully be prosecuted does abide all the consequences of his act and is not a fugitive.

The governing principles of the subject are plain and positive. The Constitution of the United States provides (Art. IV, Sec. 2, Clause 2):

> "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of

> the executive Authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the Crime."

To make effective the constitutional requirement, Congress enacted (Act Feb. 12, 1793, C. LI, Section 1; Revised Statutes, Section 5278; Compiled Statutes, 1916, Section 10126):

> "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory."

Unless the accused, then, shall have fled, he may not lawfully be extradited. Fugitiveness is jurisdictional.

> *Hyatt* v. *Corkran*, 188 U. S., 691;
> *Opinion of Attorney General Randolph* to President Washington, XX American State Papers, Class X, 1 Misc., pp. 41-43 (Gales & Seaton, Washington, 1834);
> *Spear, Extradition*, Second Edition, 467;
> *Hurd, Habeas Corpus* (1858), p. 606.

The statute of limitations of Illinois, as we have seen, requires a prosecution for felony (other than arson, murder, etc.) to be instituted within three years after the commission of the crime of which the defendant is accused; the statutory period for the prosecution of misdemeanors is eighteen months. The statute goes on, however, to provide that

> "no period during which the party charged was not usually and publicly resident within this state shall be included in the time of limitation."

The prisoner was indicted more than five years after the latest of his alleged offenses. He desired to prove that he was usually and publicly resident within the state until more than three years after September 2, 1910, that whether his alleged offenses be regarded as felonies or misdemeanors, in either event he was within the terms of the statute and not within the terms of the exception to it. This, however, the Court declined to allow him to do (pp. 11-13).

The constitutional question before us, like every constitutional question, is in the first instance a question of the meaning of words. The words with which we are concerned are nine. A person *"who shall flee from justice"* shall, the Constitution says, be delivered up "on demand of the executive authority of the state *from which he fled."* The dictionary definitions of "fleeing" are plain. The primary meaning of "flee" as an intransitive verb, says the Century Dictionary, is (Vol. IV, p. 2263):

> "To run away; take flight; seek escape or safety by flight."

See also *Murray's "New English Dictionary"* (Vol. IV, Part 1, pp. 308-309), the latest and, we believe, the leading authority.

In this sense (to quote one of the illustrations in the *Century Dictionary*), it is written in the Bible (Jas. iv., 7):

"Resist the devil, and he will *flee from you.*"

In this sense we see the word used every day: "The enemy fled from the positions that our troops attacked." The transitive meaning of the word is the same: "Bold Bavaria," says Congreve, *"fled the field"* (*Pindaric Odes,* i.). The principle involved is plain. When we speak of flight, we view the motion of the fleeing object in relation to the point of departure. (Indeed, the use of the word "from" compels such an attitude in our consideration of the constitutional provision.) We say, for example, that the Pilgrim Fathers *fled* to America, but not that Arctic explorers *fled* to the North Pole. The purpose of the former was at least in part to leave their homes. The purpose of the latter was solely to reach their goal. Similarly, slaves escaping to the North—slaves, the *effect,* if not the *purpose,* of whose motion was to leave the jurisdiction that had held them—were called *fugitives.* Immigrants coming to this country from lands in which they have known oppression—but only those immigrants—are *refugees.*

Now, we concede that the words "flee" and "fugitive" are used in a somewhat broader sense in the constitution and in the statute passed almost immediately after its adoption and intended to make it effective (*Kentucky* v. *Dennison,* 24 How., 66), than in common speech. To return to one of the examples we have put, if we say: "The enemy fled from the positions that our troops attacked," we mean, of course, that the enemy fled because our troops *did* attack them. Again, when we say that "immigrants fled to our shores from lands of oppression," we mean that these men came here because the lands they left *were* lands of oppression. In short, we make a conscious purpose of abandoning the point of departure an element of

flight. The constitution does not go so far as this. It is now clearly settled that one may be a fugitive from justice although he leaves the jurisdiction without any fear in his own mind of prosecution (*Roberts* v. *Reilly,* 116 U. S., 80; *Appleyard* v. *Massachusetts,* 203 U. S., 222).

The decision in cases like those we have just cited was indeed inevitable. Any other rule would have involved every extradition proceeding in a cloud of speculation and surmise about the motives and purposes of the prisoner (See *Streep* v. *U. S.,* 160 U. S., 128, construing the phrase "fugitive from justice" as used in a related state.) The constitutional provision (we shall consider its history more fully in Point II) was, of course, adopted to facilitate the prosecution of offenders, to meet the purposes of district attorneys and the like. Now, from their standpoint, any one who, while within the jurisdiction, commits a crime and who, *while still subject to prosecution,* leaves—whether before indictment or after indictment—but at all events before service of process, is a fugitive. When the attempt to serve him with process comes to be made he cannot be found. For practical purposes he has fled. The law in accordance with far-reaching general principles ascribes to the accused an intention to effect those consequences which naturally and reasonably flow from his act in departing. He intends to leave, and in legal theory is assumed to have the intention to evade justice. To quote a phrase which we shall analyze more fully hereafter, "the departure" of such a person is "in some degree connected with the crime." (Opinion of Governor KENT in Georgia-Maine Controversy, 2 Moore, *Extradition,* 890).

Entirely different considerations, however, apply to the case of one who calmly stays within a jurisdiction openly and publicly its resident during all the times when he can be successfully prosecuted, and who only thereafter leaves. *The law cannot ascribe to such a person*

an intention to evade justice. The one sure thing we know is that such is not his intention. If it had been, he would have left long before. His departure is demonstrably *in no degree connected with the crime.* To call that departure a flight is to make the word "departure" synonymous with "flight." It is to write into the Constitution, instead of the words "shall flee from justice," the words "shall depart from the jurisdiction." It is to rob the word "flee" of every trace of a meaning that was perfectly well established in 1787 and had indeed been established from the first moment that Englishmen used it (*Murray's English Dictionary, supra*). Again, not even from the standpoint of the most zealous district attorney is a person who leaves in these circumstances a fugitive. Such a person could not have been successfully prosecuted even if he had not left.

The argument we have developed is supported by all the definitions of "fleeing" and "fugitive" formulated in leading decisions upon the law of interstate rendition. All these definitions (as we have already indicated) exclude from the notion of "flight" and "fugitiveness" any consideration of the workings of the accused's mind. The fact of intentional departure is sufficient to make that departure a flight. But all these definitions concur in demanding as an essential ingredient of flight that that departure occur before the statutory period for prosecution has expired. Far and away the best known definition is that contained in *Matter of Voorhees* (32 N. J. L., 141, 150). BEASLEY, *C. J.*, there said, in denying a petition for the release of a prisoner upon *habeas corpus*:

> "A person who commits a crime within a state, and withdraws himself from said jurisdiction *without waiting to abide the consequences of such act*, must be regarded as a fugitive from justice of the state whose laws he has infringed." (Italics ours.)

Judge BEASLEY's definition has been adopted by all leading text writers, by special students writing in legal periodicals, by judges of the state and federal courts throughout the land, and by this court. By all the following authorities the definition is not merely approved, but *quoted*—in every instance with the qualification that the accused must depart *"without waiting to abide the consequences of his act."*

Appleyard v. *Massachusetts,* 203 U. S., 222, 231;
Ex parte White, 55 Fed., 54;
People v. *Kuhn,* 67 Mich., 463;
State v. *Clough,* 71 N. H., 594;
Johnson v. *Ammons,* 6 Ohio Dec., 608; Dec., 747;
Commonwealth v. *Trach,* 3 Pa. Co. Ct., 65, 67;
Thomas M. Cooley, "The Surrender of Fugitives from Justice," 7 Am. L. Rec., 714, 722;
W. W. Thornton, "Fugitives from Justice—Some Points of Practice," 3 Cr. L. Mag., 787, 805;
Spear, Extradition, 2d Ed., p. 383;
Scott, Interstate Rendition (1917), Section 50;
2 Moore, Extradition, 894;
Church, Habeas Corpus, 2d Ed., 1893, p. 816;
57 Am. Dec., p. 396, note to *Matter of Fetter* (3 Zab., 311);
12 Am. & Eng. Encyc. L. (Title, *Extradition*), p. 602.

Judge COOLEY, who, as we have seen, adopts the definition given in the *Voorhees* case, thus rationalizes it (*The Surrender of fugitives from justice,* 7 Am. L. Rec., 714, 722):

> "The evidence of his being a fugitive would be found in the fact that he left the State without awaiting the consequences of his conduct; not very conclusive evidence, certainly, but to require more would in many cases defeat the proceedings altogether."

The other leading definition of fugitiveness is that propounded in *Kingsbury's* case (106 Mass., 223). The petitioner there contended that she was not a fugitive from justice because she returned to her own home in Massachusetts before the crime with which she was charged was known. In overruling that contention, the court said (p. 227):

> "The material facts are, that the prisoner is charged with a crime in the manner prescribed, and has gone beyond the jurisdiction of the state, so that there has been no *reasonable opportunity to prosecute her after the facts were known.*"

This definition, as well as the definition in the *Voorhees* case, was quoted with approval by this court in *Appleyard* v. *Massachusetts, supra.* (Note also the approving citation of *Kingsbury's* case in *Hyatt* v. *Corkran,* 188 U. S., 691, 718.) The two definitions (as the fact of their both being quoted in the same decision here shows) are obviously in accord. (The phrase "reasonable opportunity to prosecute after the facts were known" used in *Kingsbury's* case is, of course, to be read in the light of the situation presented by that case. The precise point, as we have said, and as this court carefully noted in the *Appleyard* opinion, was that the accused left the demanding state before her crime had been heard of. Both events were well within the limitation period.)

The principle of the *Voorhees* opinion is that the accused must "abide the consequences of his act"; the principle of the *Kingsbury* opinion is that the accused must allow "reasonable opportunity to prosecute."

Precisely how long one must wait to abide the consequences of his act—precisely what opportunity is reasonable opportunity—the courts in these cases were not called upon to decide. But it must be clear that one who stays in the jurisdiction he has offended openly and publicly a resident of it does abide even the uttermost consequences of his act, does give all possible opportunity to be prosecuted.

Surely a State can ask no fuller opportunity than the whole measure of opportunity its own laws afford. The *maximum* requirement, we submit, is that the fugitive remain during the whole period in which the State is permitted by those laws to convict him.

While the point is not involved, we should be inclined to concede that that requirement is also the *minimum* requirement. Any departure before the statutory period has run is, we suppose, a flight, but no departure thereafter. Any other test than this simple mathematical one would involve extradition proceedings in uncertain, and, therefore, undesirable inquiries into hidden motives.

In precise accord with this view is the explicit statement of Mr. Charles Dunham, addressing, as it happened, the Bar Association of the State of Illinois, the demanding State here (*Illinois State Bar Association, Proceedings for* 1881, p. 52): *"The obligations resting upon the state with respect to the rendition of fugitives from justice."* At page 54, Mr. Dunham said:

> "Although far from satisfactory, as good a definition of a fugitive from justice as I can suggest is, one who having in one State committed a crime, *still punishable in such State,* is in another." (Italics ours.)

POINT II.

The decision in *Reed* v. *U. S.*, stands condemned by—and the decision in *Bruce* v. *Rayner*, is supported by—a consideration of the history and purpose of Article IV, Section 2, Clause 2 of the Constitution. "The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states." (*Appleyard* v. *Massachusetts*, 203 U. S., 222, 227.) It is inconceivable that the framers of the constitution contemplated such a result as that attained in *Reed* v. *U. S.* Upon the reasoning there adopted, one might be transported from Maine to California fifty years after the alleged commission of the pettiest misdemeanor even if he had resided openly and publicly in the state whose laws he was supposed to have violated throughout the whole period.

We have considered the question thus far in its purely verbal aspects. We have said that departure after open and public residence during all the time in which prosecution can be effective *cannot* be flight. Powerful as are the terminological considerations to which we have appealed, we submit that there are considerations of convenience and reason more powerful still. The origin of the constitutional provision with which we are concerned is not in doubt. The need of some process for the mutual rendition of criminals was apparent to the colonies at the very outset. The New England Confederation of 16..

provided for the return of one charged with crime to the colony he had left.

> *Kentucky* v. *Dennison,* 24 How., 66, 101;
> And see on the whole subject especially Lindsay, *Extradition in the American Colonies,* 1893;
> Moore, J. B.: *The Difficulties of Extradition* (1 Acad. of Pol. Sci. No. 4; reprinted as a separate pamphlet, 1911);
> Note to *Matter of Fetter* (57 Am. Dec., 389).

The Articles of Confederation, again, provided (Article IV, section 2):

> "If any Person be guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense."

It is obvious that Article IV, Section 2, of our constitution is flatly based upon Article IV, Section 2 of the Articles of Confederation. It was, indeed, at first proposed in the Convention of 1787 that the applicable provision of the Articles be re-enacted without change of any substantial sort whatever. Upon further consideration it was thought desirable to substitute for "high misdemeanor" the more comprehensive phrase "other crime" (5 *Ell. Deb.,* [2 Ed. 1866] 487; 3 *Madison's Papers,* 1447).

The bearing of all this upon our present question can be made plain in a moment. The provision for the mutual rendition of fugitives by the American jurisdictions had its origin, then, not in the constitution of a federal system sovereign in its own field, but in the *agreements* of the members of confederations merely. In the very exact word of Chief Justice TANEY, writing in perhaps the leading decision on the law of interstate rendition (*Kentucky* v. *Dennison,* 24 How., 66, 104), the provision is a "com-

pact." Again, as Mr. Justice HARLAN said, in *Appleyard* v. *Massachusetts* (203 U. S., 222, 227):

> "The constitutional provision relating to fugitives from justice, as the history of its adoption will show, is in the nature of a *treaty stipulation* entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states." (Italics ours.)

It is, then, in substance a "compact," a "treaty stipulation," with which we are concerned. It is something very like a question of contract construction with which we are confronted. In answering that question, and specifically in determining whether one who remains within a jurisdiction openly and publicly a resident of it until the statutory period of limitations has run, and who thereafter leaves that jurisdiction, is a fugitive, we must put ourselves in the places of the men who in 1787 prepared the Constitution, and who in that year and the years succeeding put it into effect. Specifically, we may well apply the test of construction proposed by Governor FAIRFIELD of Maine in an opinion that has done much to shape the law of extradition (*Case of Certain Alleged Fugitives from Justice*, 24 Am. Jur., 226, 229 [1840]). Governor FAIRFIELD wrote, indeed, to a different point, but it is with the manner of his writing—with the tests of construction he applied—that we are now concerned. One of Governor FAIRFIELD's predecessors, had in an earlier opinion (2 Moore, *Extradition*, pp. 887-892) taken the position that one is not a fugitive who leaves before a charge is made against him in the jurisdiction he has offended. Governor FAIRFIELD rejected this view and asked:

> "Is it probable that if an amendment, embodying the position now taken by counsel had been proposed in the convention that framed the constitution it would have been adopted? If not, neither should it be adopted by construction. It would be disregarding one of the commonest principles of interpretation

> and be making the framers of that instrument say indirectly, what they would not have said directly, and what is manifestly inconsistent with the main object they had in view."

Is it probable, we may ask, that if an amendment embodying the position taken by the court below had been proposed in the Constitutional Convention it would have been adopted? Let us suppose that someone had suggested to the body that met in Philadelphia a provision in terms reading as follows: "Even if the person demanded shall have remained openly and publicly a resident of the demanding State throughout the whole period set by the laws of that State for the prosecution of his crimes, he must be delivered up." Can anyone doubt what the vote upon such an addition as that to Article IV, Section 2, Clause 2, would have been?

We may slightly vary Governor FAIRFIELD'S method of approach to extradition problems. Let us imagine not an addition to the constitutional provision, but a contemporaneous argument upon the construction of it. Let us consider what the result would have been if someone had arisen in Philadelphia and had argued for the construction that the Circuit Court of Appeals in the *Reed* case actually adopted. Let us imagine him in a word saying the following:

"We have extended the provision in the old Articles of Confederation to embrace not high misdemeanors merely, but the pettiest crimes. We have brought not merely *mala in se,* but *mala prohibita* within the purview of the extradition process. We have imposed a positive obligation upon every State to render up every person who 'shall flee from justice' of any other. And the effect of our action is this: If a man in the District of Maine commits the pettiest misdemeanor—violates, let us say, the Sabbath laws, then lives in Maine fifty years, holding the highest offices in the District and in the State of Massachusetts,

openly and publicly a resident, and thereafter leaves the jurisdiction for whatever purpose a generation and a half after the statute of limitations has run against his offense —he may yet be extradited upon demand of the Governor of Massachusetts to the Governor of Georgia."

We submit that if any member of the Constitutional Convention had proposed such a construction of the "compact," of the "treaty stipulation" that Article IV, Section 2, Clause 2, embodied, that construction would have been rejected altogether. Some one of the lawyers in that body —Madison, perhaps, or James Wilson or Edmund Randolph—would have arisen and said: "The extradition clause means no such thing. The man referred to in the supposititious case proposed does not flee and will not be held to have fled."

It is important in this regard to recall that for all the practical purposes of life the States were much farther apart in 1787—the Union was a much bigger one—than today. It surely took more weeks in 1787 to transport a fugitive from Georgia to Maine than in 1917 it takes days to transport a fugitive from California to Maine. It seems to us shocking that one today may be brought from the Pacific Ocean to the Atlantic (without so much as a right to have his expenses on the return trip repaid to him), because several decades before, he violated a municipal ordinance, prescribing a particular mode for the packing of fish. But the thought that one could be transported from near the Canada line virtually to the Florida boundary, would have been incomparably more shocking to the men of 1787. Such a thought, we may be very sure, they never had. And such a thought, we may be equally sure, they would have repudiated if they had had.

Contemporaneous authority of at least an inferential sort is not wanting. The purpose and effect of the constitutional provision for interstate rendition were first called in question in the administration of Washington. In 1791

the Governor of Pennsylvania made demand upon the Governor of Virginia for the return of certain alleged fugitives. (For a history of the whole subject see *Kentucky* v. *Dennison*, 24 How., 66, at pp. 104-105). The Governor of Virginia hesitated to act in the absence of legislative provision prescribing a mode of procedure. Both governors submitted the question to President Washington, who in turn obtained an opinion from Attorney-General Edmund Randolph—himself a leading member of the convention that only four years before had drafted the constitution. We have not found the document in the Opinions of the Attorney-General. It has, however, been reprinted (XX Am. State Papers, Class X, 1 Misc., pp. 41-43 Gales & Seaton, Washington, 1834). A text writer calls Randolph's opinion "without doubt, the most important contemporaneous evidence to be had upon the meaning and construction of this clause of the Constitution, and of the act passed in pursuance of it." (I. T. Hoague: *Extradition Between the States,* 13 Am. L. Rev., 181, 196.) And this Court has pointed out that the Pennsylvania-Virginia Controversy "led to the act of 1793." (*Kentucky* v. *Dennison*, 24 How., 66, 105.) In our present regard, Attorney-General Randolph wrote:

> "The person charged with a crime must also flee from justice. Some species of proof is indispensable."

Is it conceivable that Attorney-General Randolph would have regarded an indispensable requirement to have been met by facts showing that the person charged with flight had stayed in the jurisdiction when he could be successfully prosecuted, and had left only when he manifestly could not be? Or rather if the Governor of the demanding State had asked for rendition upon the ground of fugitiveness, is it conceivable that Attorney-General Randolph would have deemed evidence that the accused left in the circumstances noted inadmissible?

POINT III.

The decision in *Reed* v. *U. S.*, stands condemned by—and the decision in *Bruce* v. *Rayner*, is supported by—settled decisions upon analogous aspects of the law of interstate rendition. Many authorities establish it that the notion of flight involves two elements, "bodily locomotion" (Spear, Extradition, p. 380) and bodily locomotion "in some degree connected with the crime" (Opinion of Governor Kent in Georgia-Maine Controversy, 2 Moore, Extradition, 890). Thus, one does not flee from a jurisdiction who from without its borders sets agencies of crime in motion within (*Hyatt* v. *Corkran*, 188 U. S., 691). Again, one does not flee from a jurisdiction who is "seized and forcibly carried" out of it (Spear, Extradition, p. 399). So, too, one does not flee from a state who is sent out in pursuance to its direction, for instance to perform his duties as senator of the United States (Patterson's Case, Spear, Extradition, 385). Finally, one does not flee from a state, who enters it after his crime has been committed and thereafter leaves (*Hyatt* v. *Corkran*, *supra*).

We have thus far viewed the question before this Court in the light of principle merely. We have said that as matter of general reasoning—reasoning based in the first instance upon a consideration of the meaning of the words and reenforced by a consideration of the history of the subject—one who remains in a jurisdiction throughout the period which, under its limitation laws, bars prosecution, cannot be said to flee. Our contention, however, proceeds, not upon reasoning alone, but as well upon authority.

And that authority is two-fold: the authority of this Court and of one or two other courts passing upon similar questions, and the authority of courts, executive officers and text writers upon the precise question. To the former set of authorities we appeal in this point; to the latter in the next.

In general, the conception of flight for which we argue and for which the cases to be analyzed in a moment hold, contains, as we have already said, two elements. "The departure" wrote Governor KENT of Maine in a sentence we have quoted, "must be in some degree connected with the crime." (Opinion in Georgia-Maine Controversy quoted in 2 Moore, *Extradition*, p. 890). An essentially similar thought came to the mind of Dr. SPEAR, whose *Extradition* was called by Mr. Justice MILLER of this Court "a very learned and careful work" (*U. S.* v. *Rauscher*, 119 U. S., 407, 417). Says Dr. SPEAR (Second Edition, p. 380):

> "A part of the fact consists in bodily locomotion."

It must at once appear that if these generalized statements of the nature of flight are sound, one who remains in a jurisdiction openly and publicly its resident until the statutory period had run cannot be said to flee if he thereafter leaves. Whatever else is true about such a man as that, it is clear that his departure is in no degree connected with the crime. If (as we have said) his departure *had* been connected with the crime, it would have been effected long before. Again, there is in his case nothing but bodily locomotion. We submit that four types of cases establish the soundness of those definitions and the soundness, as well, of appellant's position in the case at bar.

(a) Obviously, there must at least be "departure," "bodily locomotion."

The question has repeatedly arisen in connection with the so-called doctrine of "fugitives by construction." By

the use of the mails, telegraph, &c., or by the employment of agents, it is easily possible for one outside a state to commit a crime within it. The question has many times arisen whether such a person can be extradited, whether he has "fled from justice." There is an obvious policy in favor of extraditing him if the thing can constitutionally be done. That policy was strong enough to lead one Federal judge to remark *obiter* that the accused's "actual presence at the time was immaterial." (*In re Cook*, 49 Fed., 833, 842; affirmed without discussion on this point, *Cook* v. *Hart*, 146 U. S., 183.) The great majority of the state executives and state courts, however, took the common-sense view that the constitution called for flight, and that as Governor HILL of New York put it, "it is difficult to see how one can flee who stands still." (*Matter of Mitchell*, 4 N. Y. Cr., 596, 601). The question was squarely presented here, in *Hyatt* v. *Corkran* (188 U. S., 691). Writing for an unanimous court, Mr. Justice PECKHAM denied the propriety of the extradition and sustained the action of the Court of Appeals of New York (172 N. Y., 176), in granting a writ of habeas corpus. Justice PECKHAM, after stating the applicable constitutional and statutory provisions and after analyzing some of the decisions, said (p. 713):

> "Thus, the person who is sought must be one who has fled from the demanding State, and he must have fled (not necessarily directly) to the State where he is found. It is difficult to see how a person can be said to have fled from the State in which he is charged to have committed some act amounting to a crime against that State when in fact he was not within the State at the time the act is said to have been committed. *How can a person flee from a place that he was not in? He could avoid a place that he had not been in; he could omit to go to it; but how can it be said with accuracy that he has fled from a place in which he had not been present?*" (Italics ours.)

It is hardly necessary to say that the law on this subject is now settled. The doctrine of fugitives by construction, has been definitely and definitively abandoned everywhere.

Ex parte Hoffstot, 180 Fed., 240; affirmed *sub nom. Hoffstot* v. *Flood,* 218 U. S., 665;
In re Mohr, 73 Ala., 503;
Wilcox v. *Nolze,* 34 Ohio St., 520;
State v. *Hall,* 115 N. C., 811;
Jones v. *Leonard,* 50 Iowa, 106.

We submit that the analogy of the cases just analyzed and the case now presented is a close one. In *Hyatt's* case, what we may call a space element excluded the notion of flight. The physical fact was that Corkran never was in the demanding state and therefore never left it at all. There was no departure at all in that case. In *Biddinger's* case a time element excludes that notion. Biddinger did depart from the demanding state, but departed at a time when his departure could not, as we have said, be connected in any degree with the crime. In one important respect, indeed, the decision in the *Corkran* case has *a fortiori* authority upon the case at bar. In that case there was (as we have indicated) a strong public policy in favor of extradition. The rule contended for by the petitioner and adopted by this Court in *Hyatt* v. *Corkran* (at least in the absence of statutes in the state to which the demand is addressed punishing one who starts criminal agencies to work in other jurisdictions) may leave the grossest criminals unwhipped of justice. (For a cogent statement of this argument see the dissenting opinion of Chief Justice CLARK in *State* v. *Hall, supra.*) In the case at bar the rule for which we contend works no objectionable results whatever. If adopted, it would merely prevent the extradition of persons who never should have been extradited, persons who, because they were for more than the statutory period

openly and publicly residents of the state that demands them, can demonstrably not be punished by that state and whose return therefore, it may well be feared, will in some instances be sought for ulterior purposes.

We have, therefore, partially justified Governor KENT'S and Dr. SPEAR'S statements. We have shown, that "bodily locomotion"—"departure," there must be. It remains to show that there are other requirements than the physical one.

(b) One who is taken from a jurisdiction by force does not flee from it, and cannot be extradited to it.

Dr. SPEAR, in an interesting passage, puts the following supposititious case, and himself answers the question raised by it (2d edition, p. 399):

> "Let us suppose that a party, who has secretly committed the crime of murder in New York State, is demanded and delivered up to the Governor of Ohio on the charge of larceny committed in Ohio before the murder in New York. In Ohio he is tried for the larceny an acquitted, and there remains and takes up his residence. Soon thereafter the fact of his murder in New York is discovered; and, in order to get possession of him, the Governor of New York demands his delivery, on the basis of an indictment for murder. The question presented by these supposed facts is whether this party, under the Constitution and the law of Congress, could be extradited from Ohio to New York to be tried for murder.
>
> The answer to this question is in the negative; and the reason lies in the fact that the party has not fled from the State of New York. He was, under a legal process, seized and forcibly carried into the state of Ohio, to be there tried on the charge of larceny; and being acquitted, he chooses, as he has a right to do, to remain there."

Dr. SPEAR goes on to characterize it as "a gross absurdity, quite as bad as the theory of fugitives by construction" to hold that one has fled from a jurisdiction whose

removal is thus due to force. The soundness of Dr. SPEAR'S conclusions, was questioned by the Supreme Court of Indiana in a somewhat similar case (*Hackney* v. *Welsh,* 107 Ind., 253). See also partially *contra* to Dr. SPEAR'S view, *People* v. *Sennott,* 20 Alb. L. J., 230 [Circ. Ct. Cook County, Illinois]). Dr. SPEAR'S basic proposition was, however, certified as sound by this court in the recent and important decision of *Innes* v. *Tobin* (240 U. S., 127). The facts in that case are thus stated by Mr. Chief Justice WHITE (p. 129):

> "The Governor of Oregon honored a requisition made by the Governor of Texas for the delivery of the plaintiff in error for removal to Texas as a fugitive from the justice of that State. The accused was taken to Texas, tried for murder and a conspiracy to commit murder and acquitted. She was, however, not released from custody because she was ordered by the Governor of Texas under a requisition of the Governor of Georgia, to be held for delivery to an agent of the State of Georgia for removal to that State as a fugitive from justice."

It will at once appear that the facts of that case are in a vital respect different from the facts in Dr. SPEAR'S supposititious case. Specifically, in the case of Dr. SPEAR, the prisoner did not leave the demanding state voluntarily. The prisoner Innes did leave the demanding state of Georgia voluntarily. She did not, however, pass voluntarily into the asylum State of Texas, but, as we have seen, was carried there by extradition process. Her counsel contended that even one so circumstanced could not be extradited. "To constitute one a fugitive," Senator BAILEY argued, citing Dr. SPEAR'S work among his authorities (Summary of argument for plaintiff in error, at p. 128), "there must be a flight and it does violence to the language of the statute, to hold that a person has fled into a State, when he is brought into such state by force, involuntarily, against his will, and by the strong arm of the law." This Court, speaking through Mr. Justice WHITE, fully accepted

Senator BAILEY'S premise that the prisoner had not fled into Texas. He merely rejected the conclusion that Senator BAILEY drew from that premise. The Court held that the extradition was proper, because *the constitution* makes no requirement that there be flight *into* the *extraditing* state. Only the *statute,* not the constitution, makes that requirement. The Court, by Mr. Chief Justice WHITE, held the statute not exclusive in its operation, and that the states might extradite persons who, although not within its terms, are within the terms of the constitutional provision, persons, that is, who flee from the demanding state but not *into* the extraditing state. In order to make the theory of the decision perfectly plain, we quote the following extracts (pp. 133 to 134):

> "To appreciate this question, the proposition relied upon needs to be accurately stated. It is this: The Constitution provides for the rendition to a State of a person who shall have fled from justice and be found in another State, that is, for the surrender by the State in which the fugitive was found. This, it is conceded, would cover the case and sustain the authority exercised, as the accused was a fugitive from the justice of Georgia and was found in Texas. But the proposition insists that the statute is not as broad as the Constitution since it provides not for the surrendering of the fugitive by the State in which he is found, but only for his surrender by the State into which he has fled, thus leaving unprovided for the case of a fugitive from justice who is found in a State involuntarily by a requisition from another. And the argument is supported by the contention that as the statute exercises the power conferred by the Constitution and is exclusive, it occupies the whole field and prohibits all state action even upon a subject for which the statute has not provided and which therefore in no manner comes within its express terms. But we are of the opinion that the contention rests upon a mistaken premise, and unwarrantedly extends the scope of the decided cases upon which it relies. The first, because it erroneously assumes that although the statute leaves a subject with which there was power to deal under the

> Constitution unprovided for, it therefore took all matters within such unprovided area out of any possible state action. And the second, because while it is undoubtedly true that in the decided cases relied upon (*Kentucky* v. *Dennison, supra; Roberts* v. *Reilly, supra; Hyatt* v. *Corkran, supra*) the exclusive character of the legislation embodied in the statute was recognized, those cases when rightly considered go no further than to establish the exclusion by the statute of all state action from the matters for which the statute expressly or by necessary implication provided."

It is perfectly plain that every word of Mr. Chief Justice WHITE's opinion recognizes the soundness of the view that enforced migration across state lines is not flight. Otherwise, every word of that opinion would have been unnecessary. For the prisoner Innes, on the other view, would have been held not only to have fled from Georgia to Oregon, but to have fled too from Oregon to Texas. She would, in a word, have satisfied both the constitutional and the statutory requirement. Mr. Chief Justice WHITE's whole argument, however, is, as we have seen, that she had only to satisfy the constitutional requirement and not the statutory one.* (For a clear statement that the *Innes* case is to be put upon "the omission to extend the federal statute to the full limits of the constitutional power," see 16 Col. L. Rev., 522.)

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*It is hardly necessary to point out that the argument by which Chief Justice WHITE sustained the extradition in the *Innes* case is not available to counsel for the appellee in the case at bar. The objection to the extradition here is purely constitutional, and not at all statutory, the objection, namely, that Biddinger has not fled *from* justice. The objection is the same as in the case that Dr. SPEAR put, the objection that would have been taken if the prisoner Innes had been extradited from Georgia to Texas (without any intermediate voluntary stay in Oregon), had been tried and acquitted in Texas and if Georgia had then requested her re-extradition to that state. The statutory provisions for interstate rendition are, indeed, not exclusive. But the constitutional provision is so. "When the constitution says a person charged with crime, who shall flee from justice, shall be delivered up, the converse is that a person charged with crime who shall not have fled from justice shall not be delivered up to be removed" (*In re Jackson*, 2 Flip, 183; see also *Hyatt* v. *Corkran*, 188 U. S., 691, and the other authorities, declining to permit the extradition of persons who have never been in the demanding state).

We submit that the assumption upon which Chief Justice WHITE'S opinion proceeds—the assumption, namely, that enforced migration is not flight—is cogent authority in support of appellant's view here. We have said that the only way to support the decision below is to hold that any departure is flight, to hold that the word "flee" is meaningless. But Chief Justice WHITE'S opinion is just the other way. The word "flee" has its meaning.

(c) One who leaves a jurisdiction by its direction and as its representative does not flee from it.

In the well-known case of Senator *Patterson,* South Carolina tried to secure the extradition of one of its Senators from the District of Columbia. There is no official report, but the opinion of Judge HUMPHRIES of the Supreme Court of the District of Columbia refusing extradition is quoted or paraphrased in the two leading text books (*Spear,* pages 384-385; 2 *Moore,* page 900). Dr. SPEAR thus quotes the Judge upon this point:

> "A party sent to do a particular act cannot be said to be a fugitive from justice by the authorities that commissioned him whilst his mission is not ended."

The decision in Senator *Patterson's* case, so far as we know, has never been mentioned by this court. We confidently believe, however, that if the question were to arise this court would follow that decision.

We think the principle is this: Where it is manifest or overwhelmingly probable that the departure is in no degree connected with the crime, it will not be held a flight. Let us suppose this case: A citizen of New Jersey commits a misdemeanor there. He is drafted or even voluntarily enlists, while there, in the United States Army, and is ordered to a mobilization camp on Long Island in the State of New York. He goes there. New Jersey demands his extradition on the ground that he has fled. We submit

that extradition would be denied because it is manifest that he has not fled. And it is just as manifest that Biddinger has not fled.

(d) One does not flee from a state who enters it after his crime has been committed and thereafter leaves.

Undoubtedly the case of closest application to the case at bar is the case of *Hyatt* v. *Corkran*. We have already considered that case as final authority for the repudiation of the doctrine of constructive presence and constructive flight. It has, however, even more immediate value for us in another regard. Corkran's extradition, it will be recalled, was demanded by the State of Tennessee. The crimes with which he was charged were laid in the indictment as having occurred in April, May and June, 1901. The latest date mentioned was June 24th of that year. Corkran testified, according to the statement of facts by this court (p. 695) "that he was in the City of Nashville, in the State of Tennessee, on July 2, 1901, and (under objection as immaterial) had gone there on business connected with a lumber company in which he was a heavy stockholder; that he arrived in the city on July 2, in the morning, and left about half past seven in the evening of the same day." That is, Corkran (like Biddinger) was in the demanding state and left it, after the alleged commission of his crime. If, then, any departure after the commission of a crime is flight, Corkran's departure was a flight. *If every one flees who after committing a crime within a jurisdiction leaves it, Corkran fled.* But this Court and the New York Court of Appeals both held that Corkran did not flee. They sustained the writ of *habeas corpus* and denied the extradition. Mr. Justice PECKHAM wrote here (p. 719):

> "The subsequent presence for a day (under the circumstances stated above) of the relator in the State of Tennessee, eight days after the alleged

commission of the act, did not, when he left the State, render him a fugitive from justice within the meaning of the statute. There is no evidence or claim that he then committed any act which brought him within the criminal law of the State of Tennessee or that he was indicted for any act then committed. The proof is uncontradicted that he went there on business, transacted it and came away. The complaint was not made nor the indictments found until months after that time. His departure from the State after the conclusion of his business cannot be regarded as a fleeing from justice within the meaning of the statute. He must have been there when the crime was committed, as alleged, and if not, a subsequent going there and coming away is not flight."

Not less pointed is the language of Judge CULLEN in the Court of Appeals (172 N. Y., 176, 186):

"If the relator was not otherwise subject to extradition to the state of Tennessee, because he was not personally present in that state at the commission of the alleged offences, his subsequent presence in the state for a single day, nearly a year before the institution of any prosecution against him, could give that state no right to require his surrender. The question is whether he is a fugitive from justice, not whether the courts of the state of Tennessee have jurisdiction of his alleged offenses. That jurisdiction they have at all times, if at all, provided they secure his person. I am at a loss to imagine how a man's voluntary visit to a state can constitute him a fugitive from the state when he was not such before. I consider it as having exactly the contrary effect. If there be any force in this occurrence it must be not in his going into the state but in his failing to remain there. It is not, however, suggested that he in any respect offended against the laws of Tennessee while present there. He went there for a specific purpose, and his business accomplished, immediately left. *It is not pretended that his stay was curtailed or that he left the state on account of any*

> *suspicion of a prosecution.* Would he have been liable to extradition because on a journey to New Orleans his route passed through the state of Tennessee? Such a result seems to me utterably unreasonable. No distinction can be drawn between the two cases." (Italics ours.)

To the same effect are: Senator *Patterson's* case (Spear, *Extradition*, 385). *In re Shoemaker*, 25 Cal. App., 551, 563, refusing the extradition of one who was "in the State of Illinois eighteen days prior to" and "approximately three weeks subsequent to the day on which the larceny with which he was charged was committed" (3 Cal. L. Rev., 236).

We submit that in principle the decisions of this Court and of the New York Court of Appeals in the *Corkran* case are absolutely decisive of the question in the case at bar. The rationale of these decisions is that mere departure is not flight. For departure to be flight, it must in some degree be connected with the crime. It is true that the precise facts by which Corkran tried (and by which he was "over objection" permitted) to prove that his coming and going were not connected with his crime are different from the facts by which Biddinger sought to show that his departure was not connected with his alleged offenses. But it is submitted that if any distinction between the cases can be taken, it is a distinction in Biddinger's favor. It is at least conceivable that one who departs only eight days after the commission of a crime, who departs after having communicated, as appears from the opinion here (p. 596) with the very company that was "the subsequent prosecutor herein"—who departs, in a word, when he might have been successfully prosecuted—leaves with an actual intent to avoid prosecution. But the one thing we know about Biddinger is that his departure *could not* have been in any degree connected with his crime. No sane man (we repeat) stays in a jurisdiction openly and publicly its resident, holding the same office as the office in which he is alleged

to have committed his crimes (or a similar office) and then, after the statutory period for prosecution and punishment has come and gone, leaves because of the crime. Again there was the strongest practical policy as we have already indicated, for the extradition of one circumstanced like Corkran. If extradited, and if guilty, he could, and presumably would, have been convicted. If Biddinger is extradited, he may not (assuming the truth of the evidence which he offered before Judge HAND) be convicted, even though he should turn out to be guilty. We understand, of course, that the fact that the petitioner has a defense to an indictment is no ground for refusing extradition. (See, *infra,* pages 58-61.) We do submit, however, that the circumstance that no practical harm is done—for it is certainly no harm to the demanding state to save it from a fruitless trial, while it is a positive benefit to the prisoner to save him the expense of the return journey—is a circumstance of weight.

Tennessee, finally, had no fair opportunity to serve process upon Corkran. He was in the jurisdiction only a few hours. Illinois had every possible opportunity to serve Biddinger, for he (according to the testimony that he offered) remained openly and publicly within her borders for many years. For all these reasons, therefore, the decision in the *Corkran* case is not merely controlling authority upon the case at bar; it is *a fortiori* authority.

POINT IV.

The decision in *Reed* v. *U. S.*, stands condemned by—and the decision in *Bruce* v. *Rayner*, is supported by—the clear weight of text and judicial authority upon the precise topic.

We have thus far cited no authorities upon the precise question, except the two cases in the Circuit Court of Appeals. It is, however, clear that while explicit decisions on either side are few, the current of authority is against the decision in the *Reed* case and with the decision in the *Bruce* case.

In the court below counsel for the State of Illinois offered no authorities on this point except the decision in *Reed* v. *United States*. Judge HAND made no reference to any other authority. We have found no authority in addition to the *Reed* case sustaining the view taken below except the decision in *Depoilly* v. *Palmer* (28 D. C. App., 324). In that case the petitioner offered to prove (p. 327) that he resided in New York, the demanding state, more than three years after the commission of the crime with which he was charged. The inferior tribunal declined to receive the evidence, and the appellate court affirmed. The case was decided after *Bruce* v. *Rayner*, but before *Reed* v. *U. S.* It does not appear that the decision in the *Bruce* case was called to the attention of the court in the *Depoilly* case (or, as we have said, to the attention of the court in the *Reed* case). The decision in the *Reed* case has not, so far as we have been able to discover, been cited by any court or judge. *Depoilly* v. *Palmer* was once cited by the court that decided it, but merely as an authority on general principles of extradition law (*Goodale* v. *Splain*, 42 D. C. App., 235). Judge HAND'S opinion below was, as we have said, not reported and therefore not cited.

The decision in *Bruce* v. *Rayner*, was, on the other hand, cited with approval in the following cases:

In re Kuhns, 36 Nev., 487, 491;
Dennison v. *Christian*, 72 Neb., 703, 713 (affd. without opinion here, 196 U. S., 637).

In the *Kuhns* case the Nevada Court said:

> "In *habeas corpus* proceedings before the Circuit Court of the United States for the District of Maryland, in *Bruce* v. *Rayner*, 124 U. S., 481 [*sic*] under an indictment for bigamy alleged to have been committed more than two years before the finding of the indictment in a state in which that offense is barred within two years unless the accused flees from justice, the petitioner was allowed to prove that he remained in that state without being concealed for more than two years after the date of the alleged offense, and it was held that such evidence would not go to any matter of defense, but tended to prove that the petitioner was not a fugitive from justice."

It appears from the statement in the *Kuhns* case (pp. 488, 489) that upon an earlier application the petitioner was released upon the precise ground taken by the court in *Bruce* v. *Rayner*. TALBOT, *C. J.*, says in this regard (at pages 488, 489):

> "Prior to the arrival of the extradition papers, the sheriff of Ormsby County arrested the petitioner after receiving a copy of the indictment, which charged the desertion and nonsupport of the wife and child to have been in the year 1900. [The attempt to extradite was made in 1913.] Application was made to the District Court for a writ of *habeas corpus*. It was contended that the offense as shown by the copy of the indictment was barred by the statute of limitations, *and last Friday the district*

court ordered the discharge of the petitioner." (Italics ours.)*

The case of *Dennison* v. *Christian* (72 Nebr., 703), is an interesting one. Dennison was indicted in April, 1904, in Iowa, for receiving stolen property. The crime, it was charged, was committed in 1892, twelve years before the indictment was found. Dennison made no claim that he had resided in the demanding state during the interval, but on the contrary, proved that he had resided openly and publicly in the extraditing state, just across the border. In the circumstances, the present question was not involved at all. It is, however, reasonably clear how the Nebraska court felt with regard to issues of the sort here raised. For the Court not merely cited *Bruce* v. *Rayner* with approval as an authority upon the general principles of the law of interstate rendition (page 713). It expressed its regret at having to permit the extradition of one whose open and public residence is in the *extraditing* state. Certainly the court would never have sanctioned the extradition of one who remained openly and publicly a resident of the *demanding* state. Judge SEDGWICK said (p. 706):

> "Statutes of limitations ordinarily prevent the prosecution of crimes after so long a period of time has elapsed as to render it probable that evidence that might vindicate the accused would be lost or otherwise become unavailable. A statute of limitations which provided that proceedings for the extradition of persons charged with crime should, under circumstances like these, be subject to the same limitations prescribed for criminal proceedings in ordinary cases would perhaps not be unreasonable. Under such a statute the authorities of Iowa would

*Upon further investigation it developed that the date of the alleged offense, as laid in a true copy of the indictment, was 1913 and not 1900. A new application for extradition was therefore made, and it was of this second application that the Supreme Court wrote in the opinion from which we have quoted. That application too was denied.

> have had the full term prescribed by the statute in which to have begun these proceedings against this relator. His place of residence having been notorious, and no concealment having been attempted, there seems to have been no reason for delay in taking these proceedings that would not have been of equal force if the defendant had resided in the state of Iowa, which might have been but a few rods from his actual residence."

The decision was affirmed without opinion here (196 U. S., 637).

In plain accord with the decision in *Bruce* v. *Rayner*, is the decision in *Kemper* v. *Metzger* (169 Ind., 112). In that case an indictment for embezzlement was found in the demanding state more than two years after the alleged crime. The petitioner offered no evidence of the statute of limitations of the demanding state or of his having resided within that state during the statutory period. On the contrary, he sought to prove that he had always lived in Indiana. For these reasons because the burden of proof was upon the petitioner and he did not discharge it a judgment denying the writ of *habeas corpus* was affirmed. At page 123, HADLEY, *C. J.*, writing for an unanimous court, said:

> "It is true, as claimed, that it affirmatively appears that the indictment was not presented within a period of two years from the alleged date of commission. But how did the trial judge know that the statute of limitation applicable to embezzlement charges was two years in Tennessee and was not three years, or four years? The court was open to the prisoner, and if two years barred the prosecution against him in Tennessee we think it would have been the proper thing for him to set it up by way of answer to the return and prove it. The burden was on him to do so." Citing cases.*

*In the case at bar, Biddinger did set up the Illinois limitation statute in the answer to the return (p. 12).

> "The appellant alleged in his petition for the writ that 'he is a citizen of Marion County, Indiana, and has resided in the State of Indiana continuously since July, 1904.' The alleged crime was committed in July, 1904, and if he had been absent from Tennessee continuously since then to the time of his arrest, it is at least not probable that the statute was running in Tennessee during his absence from the state."

A very similar view of the law and practice was taken by the Supreme Court of New Hampshire in *State* v. *Clough* (71 N. H., 594). In that case it was held (we quote from the head note):

> "The fact that the record evidence accompanying a requisition shows that the offense charged was committed more than six years prior to the date of the indictment, *does not necessarily preclude a finding that the accused is a fugitive from justice.*" (Italics ours.)

At page 601 the Court said:

> "The fact that it appears from the indictment that the offenses charged in the first two counts were committed more than six years before the finding of the indictment, does not preclude a finding that she was a fugitive from justice; and such finding by the governor was justified by the evidence before him. If Whitney's affidavit is ambiguous, and may be open to more than one construction, so far as it relates to the length of time Mrs. Munsey resided in Massachusetts after the date of the offense alleged in the first count (February 28, 1905), and before November 4, 1901, when he certifies she fled, it was not incompetent as evidence, to be considered by the governor, upon the question whether she was a fugitive from justice, and the first two counts in it do not necessarily establish the proposition, as claimed by her, that during all that time she was 'usually and publicly resident' (Mass. P. S., c. 213, s. 25), in that state. If it did, it would become necessary to consider the question whether under those circum-

> stances she could be a fugitive from justice within the meaning of the law of extradition. The affidavit states unequivocally that she was 'a fugitive from justice.' This statement, though in some sense a conclusion of law, was held sufficient in *Ex Parte Reggel* (114 U. S., 642), *supra*, where the court say (p. 653): The accused should not be discharged 'merely because, in the judgment of the court, the evidence as to his being a fugitive from justice was not as full as might properly have been required, or because it was so meagre as, perhaps, to admit of a conclusion different from that reached by the governor.' It is sufficient to make out a *prima facie* case."

We submit that the implication of the New Hampshire court's decision is plain. If evidence had been offered to show that the petitioner was "usually and publicly resident within the demanding state" that evidence might have rebutted the presumption of fugitiveness raised by the extradition papers. It would then have "become necessary to consider the question whether, under those circumstances, she could be a fugitive from justice within the meaning of the law of extradition." *In the case at bar, and also in the Reed case, the courts declined to receive such evidence when offered.* In so doing, we submit, they erred.

The *Clough* case finally came to this court, but in circumstances which did not involve the present question (*Munsey* v. *Clough*, 196 U. S., 364). Instead of offering affirmative proof that she had usually and publicly resided in Massachusetts until the statutory period had run, the prisoner, as appears from a later New Hampshire report (72 N. H., 178, 179), "expressly waived the right to then [the case was at the time in the Superior Court], or at any future time, offer evidence showing that she was not a fugitive from justice, and contented herself with submitting the record evidence presented to the governor and causing it to appear that she had been denied a hearing

before him." In their brief in *Munsey* v. *Clough* here (which we have examined), counsel for the State of Massachusetts did not so much as argue for the proposition that the prisoner might have been a fugitive from justice even had she remained in that state, usually and publicly its resident, until the six-year period had run. They contented themselves with pointing out (*Appellee's brief, p. 9*) that the indictment affirmatively charged that she had not been usually and publicly a resident of Massachusetts and that no countervailing proof was offered in her own behalf.*

The question of the effect of public residence in the demanding state upon the issue of fugitiveness had never, so far as we have been able to discover, been presented at the time the two standard text writers, Dr. SPEAR and Professor MOORE, wrote. Professor MOORE did, however, make it abundantly clear what he thought the right rule is. In volume II (pages 898, 899) the author states the decision of Governor CULLOM of Illinois in the cases of *Gaffigan* and *Merrick*, and comments upon it. In that case Governor CULLOM declined to extradite two men who, according to the allegations of the indictment, had committed murder in Pennsylvania twelve or fifteen years before, who almost immediately thereafter left Pennsylvania, and who went publicly about their business in Illinois. Professor MOORE criticized unfavorably the re-

*The point decided or rather assumed by this court in *Munsey* v. *Clough*—that the mere fact that the statutory period for prosecution had elapsed, without proof that the petitioner remained a resident of the demanding state throughout, will not prevent extradition—is plain. This circumstance at most gives a defence to the accused when he is finally tried. And it is elementary that mere matters of defence—the innocence of the accused, etc.—are inadmissible to prevent extradition. (For a discussion of the principle, see 17 *Harv. L. Rev.*, 427.) In two other cases in this Court, the same situation arose (*Dennison* v. *Christian*, 196 U. S., 637; affirming 72 Nebr., 703; *Pierce* v. *Creecy*, 210 U. S., 387; see also *Pearce* v. *Texas*, 155 U. S., 311). In these cases too the petitioner offered no proof that he had ever resided in the demanding state. No question of the bearing of such residence throughout the limitation period upon the issue of fugitiveness was therefore presented in these cases, or, so far as we have been able to discover, in any case that ever came before this court.

sult to which the governor came (upon the obvious ground that the men were fugitives at the time they left Pennsylvania and could not have lost that quality thereafter, the more clearly as there was no statute of limitations for murder in either Pennsylvania or Illinois). In the course of his argument Professor MOORE said (Vol. II, p. 899):

> "It is generally held that there is no limitation as to time in the recovery of fugitives from justice *other than such as may be established by the statutes of limitation of the governments concerned*, and it does not appear to have been suggested in the case under consideration that any such limitation has been established either by the laws of Pennsylvania or of Illinois." (Italics ours.)

Writing to the precise point and commenting upon *Bruce* v. *Rayner* as subsequently reported upon the trial of the facts in the District Court (*In re Bruce*, 132 Fed., 390), the Harvard Law Review (18 Harv. L. Rev., 229), affirms the propriety of proof by the prisoner

> "that he was within the demanding state for the statutory period, and hence did not leave it as a fugitive from justice as that phrase is used in the extradition laws."

To all these authorities must, we submit, be added the authority of the general definitions we cited at the outset. Specifically, Mr. Charles DUNHAM'S definition (*The Obligation Resting upon the State with Respect to the Rendition of Fugitives from Justice*, Illinois State Bar Association, *Proceedings for 1881*, page 52):

> "Although far from satisfactory, as good a definition of a fugitive from justice as I can suggest is one who having in one State committed a crime *still punishable in such State*, is in another." (Italics ours.)

And as well the much cited definition of Chief Justice BEASLEY in *Matter of Voorhees* (32 N. J. L., 141, 150):

"A person who commits a crime within a state, and withdraws himself from such jurisdiction *without waiting to abide the consequences of such act,* must be regarded as a fugitive from the justice of the state whose laws he has infringed." (Italics ours.)

Appleyard v. *Massachusetts,* 203 U. S., 222, 231;
Ex Parte White, 55 Fed., 54;
People v. *Kuhn,* 67 Mich., 463;
State v. *Clough,* 71 N. H., 594;
Johnson v. *Ammons,* 6 Ohio Dec., 608; Dec., 747;
Commonwealth v. *Trach,* 3 Pa. Co. Ct., 65, 67;
Thomas M. Cooley: "The Surrender of Fugitives from Justice," 7 Am. L. Rec., 714, 722;
Thornton, W. W.: "Fugitives from Justice—Some Points of Practice," 3 Cr. L. Mag., 787, 805;
Spear, Extradition, 2d Ed., p. 383;
2 Moore, Extradition, 894;
Church, Habeas Corpus, 2d Ed., 1893, 816;
57 Am. Dec., p. 396, note to *Matter of Fetter* (3 Zab., 311);
12 Am. & Eng. Encyc. L. (Title, *Extradition*), p. 602.

POINT V.

The decision in *Reed* v. *U. S.*, the decision by Judge Hand below, and the only other decision anywhere found in accord with them, rest either upon a misconception of the purpose for which the evidence of residence was offered or upon a misapplication of general phrases of this Court, phrases not relating and not purporting to relate in the remotest degree to the question in hand.

In the preceding point we endeavored to show the mass of decisions and text authorities which squarely assert or clearly assume the soundness of the decision in *Bruce* v. *Raynor*, and which are in terms or in spirit inconsistent with the decision in *Reed* v. *U. S.* That case stands supported only by the decision here, which is flatly based upon it, and by the decision in *Depoilly* v. *Palmer*. We submit, however, that the most convincing criticism of the decision in the *Reed* case and of the two decisions in accord with it, is not the mere citation of inconsistent declarations. The unsoundness of the decisions in the *Reed* case, in the *Depoilly* case and here, is best demonstrated, we believe, by an examination of those decisions themselves. The unreported opinion of the court below here needs no special examination, for it is avowedly based on the decision in the *Reed* case and does not purport to add anything to that decision and to the decisions there cited. It is then solely with the *Reed* and the *Depoilly* opinions that we are concerned. In order the more effectively to criticize the *Reed* opinion, we print the relevant portion for a second time in its entirety (224 Fed., 381-382):

> "To the allegation of the petition that the petitioner was not in fact a fugitive from justice it is

> sufficient to refer to the language of the indictment which charges him with the actual commission of the offense in the State of Iowa. If he was in that state at the time when the offense was committed, he is, whenever he is thereafter found in another state, presumed to be a fugitive from justice, within the meaning of the Constitution and the laws of the United States, no matter for what purpose or reason, or under what circumstances he left the state. *Appleyard* v. *Massachusetts,* 203 U. S. 222, 27 Sup. Ct. 122, 51 L. Ed. 161, 7 Ann. Cases, 1073; *McNichols* v. *Pease,* 207 U. S. 100, 28 Sup. Ct. 58, L. Ed. 121; *Marbles* v. *Creecy,* 215 U. S. 63, 30 Sup. Ct. 32, 54 L. Ed. 92. That presumption might be overcome by proof that the petitioner was not in the State of Iowa at the time of the commission of the offense alleged. *Hyatt* v. *Corkran,* 188 U. S. 691, 23 Sup. Ct. 456, 47 L. Ed. 657; *Bassing* v. *Cady,* 208 U. S. 386, 28 Sup. Ct. 392, 52 L. Ed. 540, 13 Ann. Cas. 905. No such proof was produced, and although it appears that the order discharging the writ contains the following: 'That the application for leave to introduce evidence herein be and the same is hereby denied'—it does not appear that the evidence so offered was for the purpose of showing that the petitioner was not in the state of Iowa at the time when the offense was alleged to have been committed. On the contrary, it appears from the assignments of error that the testimony was offered by the petitioner for the purpose of showing that he was publicly a resident within the state of Iowa for more than three years after the alleged commission of the crime, 'and was therefore not a fugitive from justice.' "

The merest examination will show that the court in the *Reed* case advanced no argument in support of its conclusion whatever. It simply declared itself bound by what it conceived to be the authority of a series of decisions in this Court. We submit that in its view of the cases here the Court of Appeals fell into plain error. True it is

that in the cases cited this Court did use language which indicated that whoever commits a crime in one state and who thereafter is found in another must be deemed to have fled and should be extradited. But in no one of the cases cited (and indeed, as we have elsewhere said, in no case that ever came here) was the question now at issue so much as suggested to the Court; much less was it involved in the opinion.

We may take up in their order the cases on which the court in the *Reed* case relied. In *Appleyard* v. *Massachusetts* the petitioner's prime contention was (203 U. S., p. 226) "that he had no *belief* when leaving New York (the demanding state) at any time that he had violated its criminal laws, and therefore within the meaning of the Constitution and laws of the United States he could not be deemed a fugitive from its justice." The court held in accordance with settled principle, that his "purpose" and "motive" and "belief" were immaterial (p. 227).

In *McNichols* v. *Pease,* petitioner's sole contention was that the evidence of his physical presence in the demanding state at the time of the crime was insufficient. The court ruled against him on this question of fact.

In *Marbles* v. *Creecy,* the petitioner sought relief on several grounds—the grounds namely that the requisition for his extradition was invalid because the demanding state declined to "be responsible for any expense attending the execution of this requisition"; that he was not given a hearing by the governor of the extraditing state, and "that he is a negro, and that the race feeling and race prejudice is so bitter in the State of Mississippi against negroes that he is in danger, if removed to that state, of assassination and of being killed." These questions were not unnaturally decided against him.

In *Hyatt* v. *Corkran,* the sole question was of the extradition of one not in the state at the time of the crime but shortly thereafter entering it. It was held, as we have seen, that one so circumstanced could not be extradited.

In *Bassing* v. *Cady*, the facts were somewhat peculiar. On February 6, 1907, Bassing, who was then in Rhode Island, was indicted in New York for grand larceny. On March 6th the Governor of New York made his requisition on the Governor of Rhode Island. The requisition was honored and Bassing was extradited. He was arraigned and pleaded to the indictment. After one or two adjournments the district attorney moved to dismiss the indictment, and this was done. Thereafter Bassing returned to Rhode Island without objection from the New York authorities. A second indictment was found and a second requisition issued. The Governor of Rhode Island honored this requisition too. This court held that Bassing was not put "in legal jeopardy to his liberty" (208 U. S., 391) on the first hearing and that therefore the second proceeding was proper. There was no doubt of Bassing's presence in New York at the time the crime was committed, and Mr. Justice HARLAN, therefore, ruled that Bassing was a fugitive from justice.

We submit that the decisions in these cases cannot possibly bear upon the case at bar. Mr. Justice PECKHAM, who wrote the opinion in the *Hyatt* case, and Mr. Justice HARLAN, who wrote the opinions in all the other cases, did, as we have said, use general phrases to the effect that all the demanding state need prove is the presence of the accused at the time of the crime and his absence when the requisition issues. But these general phrases were obviously used in relation to the facts before the Court. In this aspect again, the decision of this Court in *Hyatt* v. *Corkran* is in point. In that case too the attempt was to sustain the requisition upon the authority of general phrases in earlier decisions. Alike the nature of the attempt and the fullness of its failure appear from the following extract (188 U. S., at page 716):

> "It is contended, however, that there are cases in this court which sustain the proposition main-

tained by the plaintiff in error herein, and *Kentucky* v. *Dennison,* 24 How., 66, supra, is referred to as authority. It is therein held that the words 'treason, felony, or other crime' spoken of in the Constitution included every offense forbidden and made punishable by the laws of the State where the offense is committed, and it is therefore argued that as an act committed outside its borders may, under certain circumstances, become a crime against the State, a person thus committing such an act comes within the meaning of the Constitution, and should be surrendered upon demand of the Governor of the State whose law he is alleged to have violated.

And looking at that case it is seen that the facts were wholly different, and the court had no such case as the one before us in mind. The party against whom the demand was made had committed the crime, as alleged, within the State of Kentucky, and no question arose as to his liability to be returned to Kentucky for any act done by him outside its borders. The Governor of Ohio, upon whom the demand was made, acting under the advice of his attorney general, refused to surrender the fugitive because the crime alleged was neither treason nor felony at common law, nor was it one which was regarded as a crime by the usages and laws of civilized nations, and the governor was advised that obviously a line must be somewhere drawn distinguishing offenses which did, from offenses which did not, fall within the scope of the power granted by the Constitution. It was in regard to this contention that this court held as stated."

A similar attempt was made to bind the Court of Appeals in *Hyatt* v. *Corkran* by general expressions here, specifically by some language in *Roberts* v. *Reilly* (116 U. S., 80). Judge O'BRIEN, who wrote one of the majority opinions, said in this regard (172 N. Y., p. 198):

"But the case of *Roberts* v. *Reilly* (116 U. S., 80) is cited to sustain this line of argument, and

an expression of the learned judge who spoke for the court is made prominent. *This court and every other court has often commented upon the value of isolated judicial expression in an opinion as authority.* The facts of the case upon which the decision was based must be compared with the one in hand in order to enable us to interpret the decision and the language of the opinion. The difference in the facts of that case and the one at bar is so radical and fundamental that it will be seen at a glance that it has no application."

(See also with regard to the insufficiency of general expressions as authority in extradition cases *Innes* v. *Tobin*, 240 U. S., 127, 134).

We have criticized the opinion in the *Reed* case and have said that the *general expressions* of this Court upon which that decision was avowedly and entirely based were not intended to have and do not in fact have any possible bearing upon the question in the case at bar. We do, however, submit—indeed we have already argued—that *specific definitions* in one of the cases cited (*Appleyard* v. *Massachusetts*) have the most important bearing upon the case at bar. In that case, it will be recalled, this Court quoted the definitions of fugitiveness that the New Jersey court gave in the *Voorhees* case, and that the Massachusetts court gave in the *Kingsbury* case. And by those definitions it is determined that he only flees who departs from the jurisdiction he has offended "without waiting to abide the consequences" of his act and without giving a "reasonable opportunity to prosecute."

* * * * * * * * * *

So much then for the *Reed* case. There remains by way of support to the decision below only the decision of the Court of Appeals of the District of Columbia in *Depoilly* v. *Palmer*. To show the unsoundness of that opinion too we quote the relevant portion in its entirety. The Court said (28 D. C. App., pp. 329-330):

"The appellant's counsel emphasizes the alleged fact that Depoilly, for more than three years after the alleged date of the crime with which he is charged, resided in New York.

The statute of limitations as a defense, under U. S. Rev. Stat. sec. 1044 (U. S. Comp. Stat. 1901, p. 725), and under U. S. Rev. Stat. sec. 1045 (U. S. Comp. Stat. 1901, p. 726), and the definition of a person 'fleeing from justice,' are fully discussed in *Howgate* v. *United States*, 7 App. D. C. 242, and in *Streep* v. *United States*, 160 U. S. 128, 40 L. Ed. 365, 16 Sup. Ct. Rep. 244. But the criminal charge whereon Depoilly's extradition was demanded is not pending in a Federal court, and is not barred by the Federal statute of limitations; and, further, such matters of defense, and all other matters of defense, must be determined by the court where the appellant is to be tried upon the indictment. The judgment of the court below must be affirmed, with costs."

We may at once observe that the cases cited had no possible bearing on the question involved in the *Depoilly* case and in the case at bar. In neither *Howgate* v. *United States* nor in *Streep* v. *United States* was there any question of extradition. The defendant in each case simply appealed from a conviction—Howgate from a conviction in the Supreme Court of the District of Columbia, Streep from a conviction in the Federal court—and sought to invoke the Federal statute of limitations. The questions were whether one who leaves to avoid prosecution by a State has "fled from justice" within the meaning of the Federal limitation law, &c. The *Depoilly* case then stands, if anything, more clearly bereft of support in the authority of previous decisions than does the *Reed* case. The only possible theory on which the decision in the *Depoilly* case can be supported is the theory that the proof of residence in the demanding jurisdiction throughout the limitation period is a "matter of defense." The theory becomes the more important because it was plainly the theory on which Mr.

KRESEL objected to the evidence of continuous residence in the court below, and apparently the theory on which Judge HAND sustained the objection (Record, pp. 11-13).

Now it may be at once admitted that if the issue had been with regard to a matter of defence, Judge HAND and the Court of Appeals for the District of Columbia would have been correct in holding that that issue should be left for the trial in the demanding State. But the issue is not with regard to a matter of defence. The question is whether the prisoner has fled. *The evidence by which he tries to prove that he has not fled is none the less significant because it might incidentally prove that he has a defence to the prosecution.* A very similar issue arose in cases of the type of *Hyatt* v. *Corkran, supra.* In those cases too, objection was taken to the evidence of the relator's absence from the jurisdiction on the ground that it tended to establish a defence merely—an *alibi.* (See especially *Leary's* case, 6 Abb. N. C., 43, 68, Opinion by CHOATE, *J.*) The short answer was that the evidence was not offered to prove an *alibi.* It was offered to prove there had been no flight. The point is well put in a note in the *Harvard Law Review,* commenting on the decision in the *Hyatt* case (17 Harv. L. Rev., 427):

> "It is plain that the actual guilt or innocence of the fugitive is no legitimate subject of inquiry at the requisition proceedings. *In re Clark,* 9 Wend., 212. To compel the demanding state to prove its case before the governor of another state is obviously beyond the intention of the act. Evidence offered by the alleged fugitive to prove an alibi, *as such,* is therefore quite immaterial. If, for example, while admitting that he was within the state at the time of the alleged crime he declares that he was in a different city, the allegation is irrelevant. *But it seems clear that the fugitive cannot be denied his constitutional right to show facts taking him out of the scope of the Extradition Act merely because the same facts happen to prove that he did not commit the crime."* (Italics ours.)

The same distinction between proof of an alibi and proof of absence from the state as showing that the petitioner did not flee was taken by Judge O'BRIEN of the Court of Appeals in *Hyatt* v. *Corkran* itself (172 N. Y., 176, 193). And the same distinction has been repeatedly taken since.

Ryan v. *Rogers*, 21 Wyo., 311;
Matter of Application of Shoemaker, 25 Cal. App., 551;
Hayes v. *Palmer*, 21 D. C. App., 450, 462;
People v. *McLaughlin*, 145 N. Y. App. Div., 513;
Ex Parte Larney, 4 Ohio N. P., 304 (Opinion by HARMON, *J.*)

The parallel between the immediate question here and the question of constructive presence involved in cases of the *Hyatt* v. *Corkran* type is indeed in this regard curiously close. It has been decided, in accordance with the *Harvard Law Review* note that mere proof of an *alibi* "as such"—specifically, proof that petitioner "was in a different city" at the time of the indictment, but in the same State—is inadmissible. (*Ex Parte Edwards*, 44 So. 827 [Miss. 1907]; not officially reported; *Edmunds* v. *Griffin*, 156 N. W., 353; [Iowa 1916]; not yet officially reported.)

So too proof of the statute of limitations *as such*—proof that the statutory period had run without proof that petitioner resided in the demanding State, would be inadmissible. Let us assume, for example, that the demanding State barred the prosecution of crimes of the type for which it sought extradition within six years after their occurrence. Let us assume too that it gave the benefit of its limitation laws even to persons who did not reside openly and publicly within the jurisdiction, or indeed to persons who did not reside there at all. Let us then assume that the petitioner offered proof of the bare fact that the crime was more than six years old, without any proof of residence in the demanding State throughout that pe-

riod. Such proof as that would go to a mere matter of defence—a matter of perfect defence indeed. But it would be unrelated to the issue of fugitiveness and would therefore be inadmissible. In the case at bar, however, the proof is not of the operation of the statute of limitations "as such." It is of continued residence of a character that excludes the notion of a "departure connected with the crime."

* * * * * * * * * *

The decision below then, stands, we submit, supported by no valid authority. All that can therefore be said is that some sort of authority may—until this Court speaks—be cited in support of the view that one who remains in the demanding State throughout all the period in which that State can effectively prosecute him may be extradited. But as much might have been said in the past—until this Court spoke—in support of the extradition of almost or quite anyone who happened to be in the State to which the requisition was addressed.

It seems once to have been decided that one arrested as a fugitive from justice was "by the operation of the constitution and laws of the United States" left altogether without remedy by *habeas corpus*. (*Ex Parte Willard,* opinion by Judge RAY of South Carolina [1814], summarized in *Spear, Extradition,* 460). By an inferior Federal tribunal it was denied in comparatively recent times that the State courts had any jurisdiction to review extradition proceedings. (*In re Robb,* 19 Fed., 26); but this Court in reversing said: "Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof" (*Robb* v. *Connolly,* 111 U. S., 624, 637). It was denied that one may prevent extradition by showing that no crime is charged (*State* v. *Schlemm*, 4 Harr. [Del.], 572, 577); but this Court has made

it plain that, while nothing like technical sufficiency in pleading is required, there must be in substance a charge of crime. (*Roberts* v. *Reilly,* 116 U. S., 80.) It was denied again that fugitiveness is a truly jurisdictional fact in extradition proceedings (*In re Cook,* 49 Fed., 833, 840), but this Court squarely decided the opposite (*Hyatt* v. *Cockran*). It was doubted, if not positively denied, that actual presence in the demanding State is necessary for extradition (*In re Cook, supra*), but this Court discredited the doctrine of constructive presence for all time. (*Hyatt* v. *Corkran, supra*). In the same way, and for much the same reasons, this Court, we submit, must discredit the theory that one flees from a jurisdiction who remains openly and publicly its resident during all the years in which he may be successfully prosecuted by it, and who leaves only when it is demonstrable that his effective prosecution is out of the question. His departure, as we have said, is in no degree connected with his alleged crime.

It follows then that the decision of the Court below must be reversed. *Fugitiveness is a "question of fact"* (*Roberts* v. *Reilly,* 116 U. S., 80, 95). One is permitted to show "by competent evidence as a ground for his release that he was not, within the meaning of the Constitution and laws of the United States a fugitive from the justice of the demanding State, and thereby overcome the presumption to the contrary arising from the face of an extradition warrant." (*McNichols* v. *Pease,* 207 U. S., 100, 109.) It is unnecessary to determine how convincing that evidence must be. (*McNichols* v. *Pease, supra; Hyatt* v. *Corkran, supra; People* v. *McLaughlin,* 145 N. Y. App. Div., 513; 19 *Cyc. Law & Pro., title Extradition,* pp. 94, 95).

Manifestly it is error to preclude the petitioner from offering *any* evidence. Corkran was permitted "over objection" (188 U. S. at 695) to show that his departure from Tennessee a week or two after his alleged crime was in no degree connected with it. Biddinger should have been

permitted, over objection, to prove that his departure from Illinois many years after his alleged crimes could not have been connected with them. The appeal to this Court must, therefore, prevail. (*Bruce* v. *Rayner, supra.*)

POINT VI.

The order of the court below should therefore be reversed with costs and the case remanded for further proceedings in the District Court for the Southern District of New York.

Dated September 6, 1917.

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OCT 1 1917
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Supreme Court of the United States,

OCTOBER TERM, 1917.

No. 426.

GUY B. BIDDINGER,

Appellant,

against

THE COMMISSIONER OF POLICE OF THE CITY OF NEW YORK.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPELLEE'S POINTS.

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SUBJECT INDEX.

PAGE

Statement 1-8

Argument.

POINT I. The warrant issued by the Governor of New York on the requisition of the Governor of Illinois, which conformed to the requirements of Section 5278 of the United States Revised Statutes, was a complete justification for the appellant's detention. The indictments which accompanied the requisition charged the commission of crimes by the appellant in the demanding State and are for the purposes of these proceedings, conclusive of the fact that such crimes were committed as charged. 9

POINT II. Neither the question of the guilt or innocence of the prisoner nor any other matter of defense will be inquired into by *habeas corpus*, where the prisoner has been arrested in rendition proceedings. This includes the defense of the Statute of Limitations..... 10-15

PAGE

POINT III. In the present case it is affirmatively conceded that the appellant was in Illinois at the time the crimes were committed, and subsequently left the State. That makes of him a fugitive from justice, whatever may have been the time of or the motive for his leaving Illinois. The latter will not be inquired into. The subject of time, since it involves the consideration of the Statute of Limitations, relates to a matter of defence and must be passed upon by the courts of the demanding State..... 16-30

POINT IV. The motives of the prosecution or of the Governors of the demanding and surrendering States cannot be made the subject of inquiry in proceedings of this character 30-32

Cases and Authorities Cited.

	PAGE.
Appleyard *v.* Massachusetts (203 U. S. 222)	17
Bassing *v.* Cady (208 U. S. 386)	20
Bruce *v.* Bryan (136 Fed. Rep. 1022)	14
Bruce, *In re* (132 Fed. Rep. 390)	14
Bruce *v.* Rayner (124 Fed. Rep. 481)	14, 28
Church *v.* People (1 Ill. App. 222)	27
Clark, *In re* (9 Wend. 212)	15
Commonwealth *v.* Philadelphia County Prison (220 Pa. St. 401)	31
Dennison *v.* Christian (79 Neb. 708; affd. 196 U. S. 637)	26
Depoilly *v.* Palmer (28 App. Cas., D. C., 324)	15, 25
Drew *v.* Thaw (235 U. S. 432)	12, 15, 30
Garrison *v.* People (87 Ill. 96)	27
Goodale *v.* Splain (42 App. Cas., D. C., 235)	26
Greenough, *In re* (31 Vt. 279)	13
Harris *v.* Magee (150 Iowa, 144)	15
Hoffstat, *Ex parte* (180 Fed. Rep. 240; affd. 218 U. S. 665)	19
Hyatt *v.* Corkran (188 U. S. 691)	22
Kentucky *v.* Dennison (24 How. 66)	30
Kingsbury's Case (106 Mass. 223)	19
Kuhns, *In re* (36 Nev. 487)	26
Lamkin *v.* People (94 Ill. 501)	27
McNichols *v.* Pease (207 U. S. 100)	19, 29
Marbles *v.* Creecy (215 U. S. 63)	30
Munsey *v.* Clough (196 U. S. 364)	9, 18, 26, 27

PAGE

Pearce *v.* Texas (155 U. S. 311)..... 9
People *v.* Police Commr. (100 App. Div. 483)..... 15
Pettibone *v.* Nichols (203 U. S. 192)..... 30
Pierce *v.* Creecy (210 U. S. 387).....9, 10, 15
Reed *v.* United States (224 Fed. Rep. 378), 14, 19, 24
Reggel, *Ex parte* (114 U. S. 642)..... 9
Roberts *v.* Reilly (116 U. S. 80)..... 16, 26
State *v.* Clough (71 N. H. 594)..... 27
Strassheim *v.* Daily (221 U. S. 280)..... 21
Strauss, Matter of (197 U. S. 333)..... 29
Thompson, *Ex parte* (85 N. J. Eq. 221).... 13
Voorhees' Case (32 N. J. Law, 141)..... 19
Weil *v.* Black (No. 297, October Term, 1916)..... 31

Supreme Court of the United States,

OCTOBER TERM, 1917.

No. 426.

GUY B. BIDDINGER, *Appellant,* *against* THE COMMISSIONER OF POLICE OF THE CITY OF NEW YORK.	Appeal from the District Court of the United States for the Southern District of New York.

Appellee's Points.

On June 2, 1916, His Excellency, Charles S. Whitman, the Governor of the State of New York, issued a warrant for the arrest of the appellant as a fugitive from justice, pursuant to a demand made by the Governor of Illinois (*Record, pp. 7-9*). Thereupon the appellant procured the issuance of a writ of *habeas corpus,* pursuant to which he was brought before the United States District Court, for the Southern District of New York. The proceedings which followed resulted in the dismissal of the petition and the denial of appellant's application to be discharged from custody (*Rec.,*

p. 253). In his petition, the appellant contended that the warrant of the Governor of the State of New York was illegal and void, for the following reasons:

"(a) That there was no evidence submitted to the Governor of the State of New York upon which his warrant was issued that the said Guy B. Biddinger is a fugitive from justice from the State of Illinois.

"(b) That the papers upon which the said Governor's warrant was issued showed that the said Guy B. Biddinger was not charged in the State of Illinois with any crime punishable under the laws of the State of Illinois.

"(c) That a period of more than three years elapsed between the date of the crimes charged in the papers before the Governor and when the said Guy B. Biddinger left the State of Illinois, and the said charges are therefore barred by the Statute of Limitations of the State of Illinois.

"(d) That the said Guy B. Biddinger was a resident of the City of Chicago and a resident of the State of Illinois for a period of more than four years after the date of the crime alleged to have been committed by the said Guy B. Biddinger.

"(e) Because the demand for extradition came from the Governor of the State of Illinois was secured and obtained by fraud and deception for improper motives, in bad faith and to serve private and not public ends.

"(f) Because the papers upon which the executive warrant was issued do not show that the said Guy B. Biddinger was in the State of Illinois at the time the crimes alleged in the indictment are alleged to have been committed.

"(g) That the said Guy B. Biddinger was not and is not in fact a fugitive from justice from the State of Illinois and did not flee from the said State of Illinois for any purpose either to this or any other State. (*Rec., p. 3*).

The record shows that there is no justification for any of these contentions. They are not only without merit in law, but are without foundation in fact. All but the last of them have been abandoned.

On May 31, 1916, Governor Dunne of Illinois issued a requisition to the Governor of New York asking the apprehension and delivery of Biddinger to Patrick J. Murphy, who was authorized to receive and convey him to Illinois, there to be dealt with according to law (*Rec., p. 58*). Annexed to this requisition was a request addressed to the Governor of Illinois by Maclay Hoyne, Esq., State's Attorney for the County of Cook, State of Illinois, showing that on or about May 10, 1911, Biddinger fled from the State of Illinois and was then in the County of New York, State of New York, as a fugitive from the justice of Illinois, and showing that he had been indicted for bribery, for carrying on a confidence game and for voluntarily permitting a prisoner to escape, all of which crimes are charged to have been committed in the County of Cook, State of Illinois, at various times between October 15, 1908, and September 2, 1910 (*Rec., p. 59*). Accompanying this communication were certified copies of the seven indictments found against Biddinger at the May, 1916, Term of the Criminal Court of Cook County, Illinois, for the heinous crimes stated, committed by him, while a member of the police force of Chicago (*Rec., pp. 60-78*).

Each of the indictments contains the allegation:

"*And the Grand Jurors aforesaid upon their oaths aforesaid, do further present that the said Guy Biddinger since the tenth day of May in the*

year of our Lord, one thousand nine hundred and eleven, and from thence hitherto, was not usually and publicly a resident within the State of Illinois." (*Rec. pp. 63, 66, 69, 72, 75, 76.*)

Shortly before this requisition was issued, and prior to the finding of the indictments, a previous requisition had been issued by the Governor of Illinois to the Governor of New York for the rendition of Biddinger. It was based upon affidavits charging Biddinger with the commission among others of the several crimes for which he was subsequently indicted (*Rec., pp. 77 to 107*). On that occasion there was a protracted hearing before Governor Whitman, on the question as to whether or not Biddinger was in the State of Illinois at the times of the commission of the crimes charged against him. Biddinger was examined at considerable length as to his whereabouts at the times alleged, and that evidence was considered by the Governor. After due deliberation he granted the requisition. Subsequently an attempt was made on behalf of the appellant to procure a revocation of the warrant then issued for his rendition to the Illinois authorities. The warrant was revoked under circumstances not important to be considered. At all events the indictments contained in the present record were found and a new requisition and warrant followed which are attacked in the *habeas corpus* proceedings now under review.

On the hearing which followed the joinder of issue in those proceedings all the testimony taken before Governor Whitman was at the instance of Biddinger's counsel introduced into the present record (*Rec., p. 52*).

At the hearing in the Executive Chamber it

was at first claimed by Biddinger that he was not in Illinois at the time of the commission of the crimes for which his surrender was demanded. He was called as a witness and showed beyond doubt that his contention was false. At the hearing in the District Court the appellee was prepared to prove by documentary evidence the appellant's presence in Illinois on each of the days named in the indictments as the times when the several crimes charged were committed. The appellant's counsel requested an opportunity to inspect the documents, in order that he might determine whether or not to litigate the question of appellant's presence in Illinois at the times specified. Original affidavits verified by Biddinger on the very days mentioned in the indictment were accordingly exhibited to his counsel, Mr. Grossman, by appellee's counsel. They positively showed that he was corporeally present in Illinois on the several dates stated in the indictments as the times when the several crimes charged against him were committed (*Rec., pp. 41-43, 50, 51*).

After these convincing proofs had been submitted to Biddinger's counsel and an intervening adjournment had been taken to enable him to determine whether or not proofs were to be offered in appellant's behalf on the proposition of his presence in Illinois at the times alleged, Mr. Kresel, who represented the State's Attorney of Illinois, on the resumption of the hearing repeated what had occurred at the time of the submission of these proofs, as follows (*Rec., p. 51*):

"*The Court.*—Just address yourself to the question as to whether there is proof of his presence or absence in the demanding State at the time of the commission of the alleged crime.

Mr. Kresel.—As to that point you will recall that on last Wednesday we appeared before you and I stated that I had certain records which showed Mr. Biddinger's presence in the demanding State and after our argument here we proceeded to the Commissioner's office and I there exhibited to Mr. Grossman the various affidavits, signed by Biddinger, upon the date mentioned in the indictments, I mean affidavits signed by him as a police officer, in making arrests in Chicago, and after I had exhibited those papers I asked Mr. Grossman as follows:

"Now, I ask Mr. Grossman to state on the record whether in view of the documents and records I have produced, and which he has inspected, he will state on the record that he does or does not intend to offer evidence as to whether Biddinger was present in the City of Chicago at the time alleged in the indictments, as the dates when the crimes are alleged to have been committed."

To this question Mr. Grossman replied in the negative.

Mr. Kresel then proceeded:

"So that insofar as Biddinger's presence in the City of Chicago upon the days alleged in the indictments, no proof was made by Mr Grossman that he was not present. On the contrary, proof was submitted by me to him to show that he was present, and Mr. Grossman stated that he would offer no further proof upon that.

The Court.—Does that appear upon the record?

Mr. Kresel.—That appears upon the record as I have read it to your Honor."

Thereupon Mr. Grossman declared:

"I want to say to your Honor in all fairness, I don't want to have any mistake about it, Mr. Kresel showed me a number of papers, and in accordance with my promise to your Honor that if he did that, exhibited them to me, I would advise him instanter

if I would offer any proof I stated then and I state now that I do not intend to offer any proof as to Biddinger's presence in Illinois at the times stated in the indictments" (*Rec., p. 51*).

The appellant's counsel made various offers of proof for the purpose of showing that Biddinger did not leave the City of Chicago with intent to escape prosecution for the crimes charged in the indictments, and that he was a resident of Illinois from 1911 to 1914. All of these offers were overruled, the Court holding that the only question that would be considered was whether or not the appellant was present in the State of Illinois at the time the crimes charged against him were committed.

In this connection attention is called to the facts referred to on page 28 (*infra*).

All of the numerous objections made by the appellant to the proceedings and which are set forth in the voluminous assignments of error are now abandoned save those relating to the alleged running of the Statute of Limitations against the prosecution of Biddinger for the crimes charged in the indictments because of which his surrender has been demanded by the State of Illinois.

The Statute of Limitations of Illinois, as contained in its Criminal Code, was offered in evidence by the appellant's counsel (*Rec. pp. 48, 49*). It provides:

"Time of Commencing Prosecutions—Limitations.

313. For Murder or Manslaughter.] § 1. An indictment for the crime of murder or manslaughter may be found at any period after the death of the person alleged to have been killed.

314. For Arson or Forgery.] § 2. An indictment for arson or forgery may be found at any time after the commission of the crime.

315. For Other Felonies.] § 3. All indictments for other felonies must be found within three years next after the commission of the crime, except as otherwise provided by law.

316. For Other Offenses, etc.] § 4. All prosecutions by indictment or otherwise, for misdemeanors, or for any fine or forfeiture under any penal statute, shall be commenced within one year and six months from the time of committing the offense or incurring the fine or forfeiture, except as otherwise provided by law.

317. Time of Absence not Counted.] § 5. No period during which the party charged was not usually and publicly resident within this state shall be included within the time of limitation."

Although in the petition for the writ of *habeas corpus* and in the appellant's traverse to the return of the writ, it was contended that the crimes charged against the appellant were barred by the Statute of Limitations, and the Statute was introduced in evidence in support of that contention, the only question which the appellant's counsel now argues is, that the Court erred in not permitting Biddinger to litigate in the *habeas corpus* proceeding the truth of the allegations set forth in each of the indictments, that between May 10, 1911, and the time of the finding of the indictments he was not usually and publicly a resident within the State of Illinois, on the theory that if this allegation of the indictments was false, he was not a fugitive from justice.

POINTS.

I.

The warrant issued by the Governor of New York on the requisition of the Governor of Illinois, which conformed to the requirements of Section 5278 of the United States Revised Statutes, was a complete justification for the appellant's detention. The indictments which accompanied the requisition charged the commission of crimes by the appellant in the demanding State and are, for the purposes of these proceedings, conclusive of the fact that such crimes were committed as charged.

Ex parte Reggel, 114 U. S. 642.
Pearce v. *Texas, 155 U. S. 311.*
Munsey v. *Clough, 196 U. S. 364.*
Pierce v. *Creecy, 210 U. S. 387.*

So long as a crime is charged, an indictment, even though bad as a pleading, must be regarded in proceedings of this character as sufficient.

Pierce v. *Creecy, supra.*

II.

Neither the question of the guilt or innocence of the prisoner nor any other matter of defense will be inquired into by habeas corpus, where the prisoner has been arrested in rendition proceedings. This includes the defense of the Statute of Limitations.

In *Pierce* v. *Creecy, 210 U. S. 387,* an attempt was made in a proceeding similar to the present to procure the discharge of the prisoner because of various objections to the indictments. Six grounds of insufficiency were stated, one of them being that upon the face of the indictment the prosecution was barred by the Statute of Limitations, and another that the indictment disclosed the fact that it was not found in good faith. All of the objections were, however, overruled, Mr. Justice Moody saying:

"They [the objections raised] are attacks upon the indictment as a criminal pleading, the right to make which counsel expressly renounce. If well founded, they show that the indictment is bad. But the Constitution does not require, as an indispensable prerequisite to interstate extradition, that there should be a good indictment, or even an indictment of any kind. It requires nothing more than a charge of crime. Congress, in aid of the execution of the constitutional provision, has enacted a law (§*5278, Rev. Stat.*), directing that the charge shall be made either by 'an indictment found' or 'an affidavit made before a magistrate;' and, as we have seen, this court has held that such an affidavit is sufficient * * *. But it is obvious that an objection which, if well founded, would

destroy the sufficiency of the indictment, as a criminal pleading, might conceivably go far enough to destroy also its sufficiency as a charge of crime. Are then the objections made to the indictment of that nature? Let it be assumed that they are all well taken. Let it be assumed, without decision, that the false statements contained in the affidavit were statements of opinion; that the assignments of falsity were bad, because no facts necessarily inconsistent with them were alleged; that the certainty required in criminal pleading was not observed; *and that the time alleged antedates the indictment by more than the period of the statute of limitations.* Nevertheless, the indictment alleges that on a day named the petitioner deliberately and wilfully made, under the sanction of an oath, legally administered a voluntary false statement and declaration in writing, to wit, the affidavit, and that the affidavit was not required by law or made in the course of a judicial proceeding. The indictment, whether good or bad, as a pleading, unmistakably describes every element of the crime of false swearing. * * * This court, in the cases already cited, has said, somewhat vaguely but with as much precision as the subject admits, that the indictment, in order to constitute a sufficient charge of crime to warrant interstate extradition, need show no more than that the accused was substantially charged with crime. This indictment meets and surpasses that standard, and is enough. If more were required it would impose upon courts, in the trial of writs of *habeas corpus*, the duty of a critical examination of the laws of States with whose jurisprudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden, certain to lead to errors in decision, irritable to the just pride of the States and fruitful of miscarriages of justice. The duty ought not to be assumed unless it is plainly required by the Constitution and in our opinion there is nothing in the letter or the spirit of that instrument which requires or permits its performance."

In *Drew* v. *Thaw, 235 U. S. 432*, it was held that the purpose of the writ of *habeas corpus* in proceedings of the same character as the present, was not to substitute the judgment of another tribunal upon the facts or law of the matter to be tried; that the Federal Constitution peremptorily requires that upon proper demand the person charged with crime shall be delivered up to be removed to the State having jurisdiction of the crime; that questions as to the sufficiency of an indictment charging an admittedly insane person with having committed a crime are for the courts of the State having jurisdiction of the crime to determine according to the law of that State; and that they cannot be determined by the courts of another State on *habeas corpus* proceedings in interstate rendition.

Mr. Justice Holmes, in the course of his opinion, said:

"The most serious argument on behalf of Thaw is that if he was insane when he contrived his escape he could not be guilty of crime, while if he was not insane he was entitled to be discharged; and that his confinement and other facts scattered through the record require us to assume that he was insane. But this is not Thaw's trial. In extradition proceedings, even when as here a humane opportunity is afforded to test them upon *habeas corpus*, the purpose of the writ is not to substitute the judgment of another tribunal upon the facts *or the law* of the matter to be tried. The Constitution says nothing about *habeas corpus* in this connection, but peremptorily requires that upon proper demand the person charged shall be delivered up to be removed to the State having jurisdiction of the crime. *Article 4, § 2. Pettibone* v. *Nichols, 203 U. S. 192, 205.* There is no discretion allowed, no inquiry into motives. *Kentucky* v. *Dennison, 24 How. 66; Pettibone* v. *Nich-*

ols, 203 U. S. 192, 203. The technical sufficiency of the indictment is not open. *Munsey* v. *Clough, 196 U. S. 364, 373.* And even if it be true that the argument stated offers a nice question, *it is a question as to the law of New York which the New York courts must decide.* * * * How far such considerations shall be taken into account *it is for the New York courts to decide,* as it is for a New York jury to determine whether at the moment of the conspiracy Thaw was insane in such sense as they may be instructed would make the fact a defence. *Pierce* v. *Creecy, 210 U. S. 387, 405; Charlton* v. *Kelly, 229 U. S. 447, 462.* When, as here, the identity of the person, the fact that he is a fugitive from justice, the demand in due form, the indictment by a grand jury for what it and the Governor of New York allege to be a crime in that State and the reasonable possibility that it may be such, all appear, the constitutionally required surrender is not to be interfered with by the summary process of *habeas corpus* upon speculations as to what ought to be the result of a trial in the place where the Constitution provides for its taking place."

So in *Ex Parte Thompson, 85 N. J. Eq 221,* it was held that on a *habeas corpus* proceeding to test the writ of interstate rendition testimony will not be weighed as to the presence in or absence from the demanding state of an alleged fugitive from justice, at the time of the stated commission of a crime therein by him, and that in such proceeding it is not competent to try the question of alibi or of the guilt or innocence of the accused.

In *re Greenough, 31 Vt. 279, 288,* it was said:

"The court, upon *habeas corpus,* cannot pronounce upon the guilt or innocence of the alleged fugitive. That must be left to the courts of that state, where the crime is alleged to have been committed."

In *Reed* v. *United States, 224 Fed. Rep. 378*, decided by the Circuit Court of Appeals, for the Ninth Circuit, it was sought to litigate on a *habeas corpus* proceeding the question as to whether the crime charged against the fugitive from justice was barred by the statute of limitations. It was held that it could not be done, the Court saying:

"The indictment alleges that the offense was committed on June 7, 1909, and that from that date until the finding of the indictment, which was November 20, 1914, the accused has not been publicly a resident within the State of Iowa. The question of the alleged bar by the statute of limitations of Iowa is one that should be left to the decision of the courts of that state upon demurrer or motion in arrest of judgment. (*Pierce* v. *Creecy, supra.*"

The appellant relies upon *Bruce* v. *Rayner, 124 Fed. Rep. 481*, decided by the Circuit Court of Appeals, for the Fourth Circuit, in 1903. It was there held that on a *habeas corpus* proceeding for the discharge of a person held under an extradition warrant upon an indictment for bigamy, it was competent for the petitioner to show that he remained in the State where he was indicted, without being concealed, for more than two years after the alleged offense, and that therefore a prosecution for bigamy was barred, the contention being that such evidence does not go to any matter of defense but tends to prove that petitioner was not a fugitive from justice.

The subsequent history of the case will be found in *In re Bruce, 132 Fed. Rep. 390*, and *Bruce* v. *Bryan, 136 Fed. Rep. 1022*. Without going into an elaborate discussion, it suffices to say that that decision was rendered prior to the judgment of

this court in *Pierce* v. *Creecy*, and is in direct contravention of the principle laid down in *Drew* v. *Thaw* and other extradition cases in various jurisdictions, where it has been held that matters of defense cannot be considered in *habeas corpus* proceedings which challenge the validity of the warrant of extradition. The operation of the Statute of Limitations is a matter of defense. It is in almost every case a mixed question of law and fact. It involves the interpretation and meaning of the law and the question as to whether or not the facts bring the case within the statute or its exceptions. It is manifestly essential to State dignity that matters of such vital importance to the jurisprudence of a demanding State shall be determined by its courts and not by those of another jurisdiction.

On the general proposition as to the restricted character of the investigation, aided by *habeas corpus* in a State rendition proceeding, attention is called to the following decisions:

People v. *Police Commissioner, 100 App. Div. 483.*

Harris v. *Magee, 150 Iowa, 144.*

Depoilly v. *Palmer, 28 App. Cas. (D. C.) 324.*

In re Clark, 9 Wend. 212.

III.

In the present case it is affirmatively conceded that the appellant was in Illinois at the time the crimes were committed, and subsequently left the State. That makes of him a fugitive from justice, whatever may have been the time of, or the motive for his leaving Illinois. The latter will not be inquired into. The subject of time, since it involves the consideration of the Statute of Limitations relates to a matter of defence and must be passed upon by the Courts of the demanding State.

But for the fact that appellant while admitting the principle, nevertheless seeks to destroy it, by a play upon words, it is deemed important to pass in review the familiar decisions in which this Court has formulated the controlling doctrine as to what constitutes a fugitive from justice.

In *Roberts* v. *Reilly, 116 U. S. 80, 97,* Mr. Justice Matthews said:

"The appellant in his affidavit does not deny that he was in the State of New York about the date of the day laid in the indictment when the offence is alleged to have been committed, and states, by way of inference only, that he was not in that State on that very day; and the fact that he has not been within the State since the finding of the indictment is irrelevant and immaterial.

To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the

crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another."

In Appleyard v. *Massachusetts, 203 U. S. 222,* it was held that a person charged by indictment within a State with the commission of a crime covered by its laws, and who left the State, no matter for what purpose nor under what belief, became from the time of such leaving within the meaning of the Constitution and laws of the United States a fugitive from justice; and in the absence of preponderating or conceded evidence of absence from the demanding State when the crime was committed, it was the duty of the other State to surrender the fugitive on the production of the indictment properly authenticated.

Mr. Justice Harlan in the course of his opinion said:

"But the appellant contended below, as he does here, that he had no *belief* when leaving New York at any time that he had violated its criminal laws, and therefore, within the meaning of the Constitution and laws of the United States, he could not be deemed a fugitive from its justice. This contention cannot be sustained; indeed, it could not be sustained without materially impairing the efficacy of the constitutional and statutory provisions relating to fugitives from justice. An alleged fugitive may believe that he has not committed any crime against the laws of the State in which he is indicted, and yet, according to the laws of such State, as administered by its judicial tribunals, he may have done so, and his belief, or

want of belief, may be without foundation in law. *It is the province of the courts of New York to declare what its laws are, and to determine whether particular acts on the part of an alleged offender constitute a crime under such laws.* * * * So that the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he consciously fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding State. A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime leaves the State—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the State from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any State."

In *Munsey* v. *Clough, 196 U. S. 364,* which is peculiarly applicable here in view of the concession of Biddinger's counsel, to which reference has been made in the statement of facts, Mr. Justice Peckman said:

"The position taken by the plaintiff in error upon the hearing on the return of the writ in refusing to introduce evidence upon the question whether she was in fact a fugitive from justice left the case for decision upon the papers before the Governor upon which he acted in issuing the warrant of arrest. We have no doubt that a *prima facie* case was made out, and as the plaintiff in error waived any right to give

further evidence, she is concluded by that *prima facie* case. * * * Upon the question of fact, whether the plaintiff was a fugitive from justice, her counsel, in the argument before this court, set up several objections of a technical nature, which, he argued, showed that the plaintiff in error was not present in Massachusetts at the time when one of the crimes, at least, was alleged to have been committed. * * * When it is conceded, or when it is so conclusively proved, that no question can be made that the person was not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding State, then the court will discharge the defenlant. *Hyatt* v. *Corkran, 188 U. S. 691,* affirming the judgment of the New York Court of Appeals, *172 N. Y. 176.* But the court will not discharge a defendant arrested under the Governor's warrant where there is merely contradictory evidence on the subject of presence in or absence from the State, as *habeas corpus* is not the proper proceeding to try the question of alibi, or any question as to the guilt or innocence of the accused. As a *prima facie* case existed for the return of the plaintiff in error, and she refused to give any evidence upon the return of the writ which she had herself sued out, other than the papers before the Governor, no case was made out for her discharge."

Kingsbury's Case, 106 Mass. 223.
Voorhees' Case, 32 N. J. Law, 141.
Ex parte Hoffstot, 180 Fed. Rep. 240; affd. 218 U. S. 665.
Reed v. *United States, 224 Fed. Rep. 381.*

In *McNichols* v. *Pease, 207 U. S. 100, 108,* Mr. Justice Harlan, reviewing the authorities on the subject of interstate rendition, enumerated various principles which had been firmly established, the first of which was formulated by him thus:

"A person charged with crime against the laws of a State and who flees from justice, that is, after committing the crime, leaves the State, in whatever way or for whatever reason, and is found in another State, may, under the authority of the Constitution and laws of the United States, be brought back to the State in which he stands charged with the crime, to be there dealt with according to law."

In *Bassing* v. *Cady, 208 U. S. 386,* the appellant was surrendered to New York State on the demand of its Governor and the charges against him were thereupon dismissed before the magistrate in New York, and he was discharged from custody on the motion of the District Attorney on the ground, claimed to have been asserted by him, that he did not have sufficient evidence to hold the accused. The appellant then returned to Rhode Island without any objection on the part of the New York authorities. Thereafter a second indictment was found against him in New York and he was again arrested on a warrant issued by the Governor of Rhode Island on the demand of the Governor of New York. It was contended that under these circumstances the appellant was not a fugitive from justice. Mr. Justice Harlan, however, dealt with that proposition as follows:

"So far as the record shows it did not appear by proof that the accused was not in New York at the time the crime with which he is charged was committed. If he was in New York at that time (and it must be assumed upon the record that he was) and thereafter left New York, *no matter for what reason or under what belief,* he was a fugitive from the justice of that State within the meaning of the Constitution and laws of the United States. These views are in accord with the adjudged cases. * * * He was none the less such a fugitive,

within the meaning of the Constitution and laws of the United States, because after the dismissal of the first indictment he left New York and returned to Rhode Island with the knowledge of or without objection by the New York authorities."

In *Strassheim* v. *Daily, 221 U. S. 280,* the respondent was discharged on *habeas corpus* by the District Court for the Northern District of Illinois, on the ground that he was not a fugitive from justice. The Sheriff appealed. The prisoner was indicted in Michigan for bribery charged to have taken place on May 13, 1908. The respondent was in Chicago on that day, but it appeared that at the time when some of the acts constituting the crime were committed he was in Michigan. In reversing the judgment of the lower court Mr. Justice Holmes said:

"Of course we must admit that it does not follow that Daily is a fugitive from justice. *Hyatt* v. *Corkran, 188 U. S. 691, 712.* On the other hand, however, we think it plain that the criminal need not do within the State every act necessary to complete the crime. If he does there an overt act which is and is intended to be a material step toward accomplishing the crime, and then absents himself from the State and does the rest elsewhere, he becomes a fugitive from justice, when the crime is complete, if not before. * * * *For all that is necessary to convert a criminal under the laws of a State into a fugitive from justice is that he should have left the State after having incurred guilt there, Roberts* v. *Reilly, 116 U. S. 80,* and his overt act becomes retrospectively guilty when the contemplated result ensues.

We have given more attention to the question of time than it is entitled to, because of the seeming exactness of the evidence. But a shorter and sufficient answer is to repeat that the case is not to be tried on *habeas corpus,* and that when, as here,

it appears that the prisoner was in the State in the neighborhood of the time alleged it is enough."

The decision in *Hyatt* v. *Corkran, 188 U. S. 691,* on which the appellant relies, has no bearing upon this case. It was there conceded that the relator was not within the demanding State at the time alleged in the indictment, nor at any time when the acts charged as a crime were, if ever, committed. On those facts it was decided that the relator was not a fugitive from justice. As Mr. Justice Peckham well said:

"It is difficult to see how a person can be said to have fled from the State in which he is charged to have committed some act amounting to a crime against that State, when in fact he was not within the State at the time the act is said to have been committed. How can a person flee from a place that he was not in?"

Referring to *Hyatt* v. *Corkran,* Mr. Justice Harlan said in *Appleyard* v. *Massachusetts supra, (p. 230)*:

"The present case is a wholly different one; for here the presumption arising from the recitals in the warrant of arrest in favor of its validity was not overthrown by the proof; on the contrary, it appeared, by a preponderance of evidence, that the accused was in the State of New York when the alleged crime was committed."

In the present case it was expressly conceded that Biddinger was in Illinois on each of the days when the crimes charged against him were committed. That fact is established by documentary evidence, by affidavits verified by him. Having, therefore, been in Illinois when the crimes were committed, and being in New York at the time when his presence was sought in Illinois for the purposes of the prosecution instituted against

him in that State, he was, within the express terms of the authorities which have thus far been considered, a fugitive from justice.

In the face of his unequivocal concession and of the authorities which show that he was upon the conceded facts a fugitive from justice, the appellant nevertheless contends, that he was not a fugitive from justice, because he was ready to give evidence "that he openly and publicly appeared in the City of Chicago during the years 1911, 1912, 1913, 1914 and 1915, and that at the time of his appearance there he called upon his superior officers in the police department of Chicago and that they at all times knew where to find him and where to address him and where he was, so that he could be recalled by them at any time." From the offer thus made, it is argued that he was not a fugitive from justice.

The fact remains, however, that in the indictments which are the basis of the rendition proceedings instituted against him it is alleged that from May 10, 1911, to the finding of the indictments, the appellant "was not usually and publicly a resident of the State of Illinois." That was a fact to be determined on the trial of the indictments, to the same extent as the fact of appellant's guilt of the crime charged by them.

The very offer of proof set forth in the Assignments of Error and which constitutes the basis of appellant's argument amounts to an admission that, from 1911 to 1915, Biddinger was not an actual resident of Illinois, but that he may have appeared there occasionally, and that his superior officers in the police department of Chicago saw him at the times when he may have been there and

"knew where to address him" so that he might be "recalled." If this means anything, it indicates that during the years mentioned he must usually have been outside of Illinois, and that it was necessary to recall him from without that State into it. In other words, he was absent from the State.

What the appellant in reality sought to do was, to try in a *habeas corpus* proceeding, the question as to whether or not the right to prosecute him for the crimes charged in the indictments was barred by the Illinois Statute of Limitations. That, as has been shown by the authorities above cited could not be done.

It is now attempted to justify an investigation of the facts involved in that issue, on the pretence that the appellant was not a fugitive from justice because, it is asserted, that he did not leave the State of Illinois until the right to prosecute him had been barred by the Statute of Limitations. That is only a sophistical attempt to evade the decisions of this Court, which have been enumerated (*supra*) defining the meaning of the phrase "fugitive from justice" as well as those which have, in the most direct terms, adjudged that the merits of an indictment, including the defence of the Statute of Limitations, cannot be litigated in a rendition proceeding, and can only be considered by the tribunals of the demanding State.

As is shown by appellant, the Circuit Court of Appeals for the Ninth Circuit had before it in *Reed* v. *United States, 224 Fed. Rep. 378*, the very question now under consideration. In addition to the language which has already been quoted from the opinion in that case (*supra*), the Court said:

"To the allegation of the petition that the petitioner was not in fact a fugitive from justice it is sufficient to refer to the language of the indictment which charges him with the actual commission of the offense in the State of Iowa. If he was in that State at the time when the offense was committed, he is, whenever he is thereafter found in another State, presumed to be a fugitive from justice, within the meaning of the Constitution and the laws of the United States, no matter for what purpose or reason, or under what circumstances, he left the State. *Appleyard* v. *Massachusetts, 203 U. S. 222; McNichols* v. *Pease, 207 U. S. 100; Marbles* v. *Creecy, 215 U. S. 63.* That presumption might be over come by proof that the petitioner was not in the State of Iowa at the time of the commission of the offense alleged. *Hyatt* v. *Corkran, 188 U. S. 691; Bassing* v. *Cady, 208 U. S. 386.* No such proof was produced, and although it appears that the order discharging the writ contains the following: 'That the application for leave to introduce evidence herein be and the same is hereby denied'—it does not appear that the evidence so offered was for the purpose of showing that the petitioner was not in the State of Iowa at the time when the offense was alleged to have been committed. On the contrary, it appears from the assignments of error that the testimony was offered by the petitioner for the purpose of showing that he was publicly a resident within the State of Iowa for more than three years after the alleged commission of the crime. 'and was therefore not a fugitive from justice.' We find no error."

To like effect is *Depoilly* v. *Palmer, 28 App. Cases (Dist. Col.) 324.* There the appellant was arrested under a warrant for his return to the State of New York on the demand of the Governor of that State, on an indictment found May 29, 1906. He offered to prove that he lived in the City of New York and was there on May

10, 1902, the time when the crime was charged to have been committed, and that he remained within the State until August 1, 1905. The Court refused to permit the introduction of this evidence. In sustaining the ruling Mr. Justice McComas said:

"Depoilly admitted that he was the person charged with the crime described in the indictment; that he was within the State of New York at the time the crime is alleged to have been committed; that he thereafter left New York and was found in this District. * * * The appellant's counsel emphasizes the alleged fact that Depoilly, for more than three years after the alleged date of the crime with which he is charged, resided in New York. The statute of limitations as a defense, under U. S. Rev. Stat. sec. 1044 and under U. S. Rev. Stat. sec. 1045, and the definition of a person 'fleeing from justice' are fully discussed in *Howgate* v. *United States, 7 App. D. C. 242,* and in *Streep* v. *United States, 160 U. S. 128.* But the criminal charge whereon Depoilly's extradition was demanded is not pending in a Federal Court, and is not barred by the Federal statute of limitations; and, further, such matters of defense, and all other matters of defense, must be determined by the court where the appellant is to be tried upon the indictment."

See also *Goodale* v. *Splain, 42 App. Cases (Dist. Col.) 235, 239.*

In *re Kuhns, 36 Nev. 487,* cited by the appellant, it appeared beyond dispute that the prisoner was not in the State of Pennsylvania at the time when the indictment charged him with having committed the crime for which he was sought to be surrendered.

In *Dennison* v. *Christian, 72 Neb. 703, 713; aff'd. 196 U. S. 637,* on the authority of *Munsey* v. *Clough* and *Roberts* v. *Reilly, supra,* the fact that

the prisoner was charged with having committed a crime in Iowa in 1892 and was not indicted until 1904, and had for the intervening twelve years resided openly and publicly in the extraditing State, just across the border from Iowa, was held not to make him any the less a fugitive from justice, and he was accordingly surrendered to the demanding State.

In *Munsey* v. *Clough, 196 U. S. 364,* affirming *State v. Clough, 71 N. H. 594,* the indictment on which the demand for surrender was made by the Governor of Massachusetts on the Governor of New Hampshire contained three counts. The first charged a crime committed on February 28, 1895, the second one committed on May 17, 1895, and the third alleged the date of the crime to be November 20, 1901. The indictment was found in February, 1902. The first and second counts conforming to the rule of pleading, adopted in the present case and laid down in the Illinois decisions, (*Garrison* vs. *People, 87 Ill. 96; Lamkin* vs. *People, 94 Ill. 501* and *Church* vs. *People, 10 Ill. App. 222;*) contained the allegation that the appellant "had not been usually or publicly a resident of Massachusetts at any time since the commission of the offense set forth in those counts." It was argued by the appellant from that allegation, that the indictment necessarily showed that she was not present in Massachusetts at the time when the crime charged in the third count was committed. This ingenious argument was disregarded, it being pointed out that whether she was a resident or not was unimportant as to the third count if she were present in the State and committed the crime therein.

The wisdom of the policy adopted by the Courts in the foregoing decisions and the unsoundness of

Bruce vs. *Rayner, 124 Fed. 481,* on which appellant relies is demonstrated by the very testimony offered by the appellant, the exclusion of which constitutes his plaint. It was not even an offer to prove that he was usually and publicly resident in Illinois from 1911 to 1915, but merely that occasionally during those years he was in Illinois, and that when he was not there the police authorities knew where he was to be found.

The evidence given by the appellant before the Governor of New York, and which constitutes a part of the record here, however, shows that from 1911 until 1914, although nominally a member of the police force of Chicago, he was in fact in the employ of the Burns Detective Agency and of the District Attorney of Los Angeles, to render detective service in California, and was paid by them and that from 1911 until 1914, he was almost constantly absent from Illinois. This is shown by his own testimony (*Rec. pp. 150-167*). During practically all of that time, as was conceded by his counsel on the hearing, he was absent on a furlough until he resigned on January 25, 1914, as a nominal member of the police force of Chicago (*Rec. p. 146*). His resignation addressed to the General Superintendent of the Police Department, which appears (*Rec. p. 160*) and though in fact dated 1914, (*Rec. p. 146*) is erroneously printed as 1911, is as follows:

"I herewith tender you my resignation to take effect immediately. In view of the fact that I have not been actively engaged in any police work for the City of Chicago for the past four years, and am probably keeping some good man out of the promotion, I therefore think it best that I should resign, and trust you will accept this resignation immediately upon receipt of the same."

These statements suffice to show the serious consequences which might result if a court of another jurisdiction than that of Illinois were to undertake to try the complicated question of fact as to whether or not appellant was as charged in the indictments "usually and publicly a resident within" the State of Illinois from May 10, 1911, until the finding of the indictments, and to give a judicial interpretation of its Statute of Limitations applicable to criminal prosecutions, by defining the meaning of the phrase "usually and publicly resident within the State," contained in the local law of that State.

If such an issue could be tried on a *habeas corpus* proceeding sued out after a warrant of rendition has been granted the essential nature of interstate rendition would be ignored. It would in effect constitute a change of venue. A vital issue tendered by the indictment on which it is based would be tried in the surrendering instead of in the demanding State, whose laws are sought to be vindicated. That would result in a radical departure from the underlying purpose of rendition and extradition proceedings, thus expressed by Mr. Justice Brewer in *Matter of Strauss, 197 U. S. 333*:

"They go upon the theory that extradition is but a mere step in securing the presence of the defendant *in the court in which he may be lawfully tried*".

It seems especially pertinent in this connection to repeat the impressive words of Mr. Justice Harlan in *McNichols* v. *Pease, 207 U. S. 112*:

"When a person is held in custody as a fugitive from justice under an extradition warrant, in proper form, and showing upon its face all that is required by law to be shown as a pre-requisite to

its being issued, he should not be discharged from custody unless it is made clearly and satisfactorily to appear that he is not a fugitive from justice within the meaning of the Constitution and laws of the United States. We may repeat the thought expressed in *Appleyard's case*, above cited, that a faithful, vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and welfare of the States, and that 'while a State should take care, within the limits of the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a State to find a permanent asylum in the territory of another State.' "

IV.

The motives of the prosecution or of the Governors of the demanding and surrendering States cannot be made the subject of inquiry in proceedings of this character.

That was decided in,

Kentucky v. *Dennison, 24 How. 66.*
Pettibone v. *Nichols, 203 U. S. 192, 203.*
Drew v. *Thaw, 235 U. S. 432.*

In *Marbles* v. *Creecy, 215 U. S. 63,* it was held that on *habeas corpus* the Court can assume that a requisition made by an executive of a State is solely for the purpose of enforcing its laws, and that the person surrendered will be legally tried and adequately protected from illegal violence.

To the same effect is the decision in *Commonwealth* v. *Philadelphia County Prison, 220 Pa. St. 401,* where the Court said:

"Assuming that the demanding state has complied with the requirements of the Federal Constitution and the Act of Congress in making the requisition for the accused, it would be equally an unconstitutional exercise of power for the court of the asylum state to inquire into the motives of the prosecution, instituted in conformity with the laws of the demanding state, and release the offender and thereby prevent his extradition for trial in the latter state. The only possible effect of permitting the motives of the private prosecutor to be shown on a *habeas corpus* extradition proceeding would be to show the guilt or innocence of the accused. If a person is guilty of an offense against the laws of a state, it is no defense for him to allege that the prosecution was inspired by improper motives. It very frequently happens that criminals are brought to punishment only by persons who have motives other than the vindication of the violated law; but it has never been held that such reason was sufficient to invalidate a conviction for a criminal offense. Good faith and courtesy require a state to honor the demand of a sister state for the return of a fugitive from justice."

In view of the extraordinary efforts of the appellant to inject into this case the idea that this prosecution was set on foot by Mr. A. Leo Weil in order to prevent the appellant from becoming a witness against him in West Virginia, it may be stated, because the facts are, it is believed, shown by the records of this court (*Weil* vs. *Black, Oct. Term, 1916*), that the indictments against Mr. Weil in the courts of West Virginia were dismissed at the instance of the State's Attorney who procured them, upon the statement of that of-

ficial, as well as of his successor, in open court, that there was no foundation for the prosecution.

V.

The decree of the District Court should be affirmed.

LOUIS MARSHALL,
ISIDOR J. KRESEL,
Appellee's Counsel.

FILED

SEP 27 1917

Supreme Court of the United States

OCTOBER TERM, 1917.

GUY K. BIDDINGER,

Appellant,

against

No. 433.

ARTHUR WOODS, Police Commissioner of the City of New York,

Appellee.

BRIEF IN BEHALF OF THE POLICE COMMISSIONER, APPELLEE.

EDWARD SWANN,
District Attorney,
New York County.

Index.

	Page
Statement	1
Introductory	2
Point I. The review by the judiciary of an executive warrant of interstate rendition is limited to ascertaining whether the jurisdictional facts upon which the authority of the executive to issue the warrant depended were made to appear before him. The courts are not authorized to try de novo upon evidence presented to them, the question of fact whether the accused was a fugitive from justice. To do so is beyond the scope of their functions, and would constitute an impingement by the judiciary upon a function confided to the executive	3
Point II. Assuming that the courts may, upon evidence presented de novo to them, determine the question of fact whether the accused was a fugitive from justice, the evidence offered in this case was properly excluded as irrelevant to that proposition	16
Conclusion	26

Table of Cases.

Appleyard v. Massachusetts, 203 U. S. 222. 18, 19

Bassing v. Cady, 208 U. S. 386. 18, 19

Benson v. McMahon, 127 U. S. 457. 11

Bollman, Ex parte, 4 Cranch. 75. 11

Bruce v. Rayner, 124 Fed. Rep. 481, 17, 20, 21, 22, 23

PAGE

Charlton v. Kelly, 229 U. S. 447 11
Church v. People, 10 Ill. App. 222 24

Dennison v. Christian, 72 Neb. 703; aff'd 196 U. S. 637 23
Depoilly v. Palmer, 28 App. D. C. 324 23
Drew v. Thaw, 235 U. S. 432 ....6, 8, 18, 19, 20, 25
Duddy's Case, 219 Mass. 548 19

Farrell v. Hawley, 78 Conn. 150 ..... 4, 6
Frank v. Mangum, 237 U. S. 309 ..... 9, 10

Glasgow v. Moyer, 225 U. S. 420 9

Hoffstott, Ex parte, N. Y. L. J., May 24, 1910; 180 Fed. Rep. 240; 218 U. S. 665 .. 19
Horner v. United States, 143 U. S. 570 11
Hyatt v. Corkran, 188 U. S. 691 ...3, 4, 5, 6, 13, 14

Innes v. Tobin, 240 U. S. 127 6
In re Kuhns, 36 Nev. 487 23
In re Strauss, 126 Fed. 327 ..... 8, 12

Kaizo v. Henry, 211 U. S. 146 10
Kemper v. Metzger, 169 Ind. 112 23
Kentucky v. Dennison, 24 How. 66 .....6, 12, 20
Kilbourn v. Thompson, 103 U. S. 168 7
Kingsbury's Case, 106 Mass. 223 19

Lamkin v. People, 94 Ill. 501 24
Lange, Ex parte, 18 Wall. 163 10
Lay v. State, 42 Ark. 105 21

McCray v. United States, 195 U. S. 27 7
McLane v. Georgia, 4 Ga. 335 24
McNamara v. Henkel, 226 U. S. 520 11
McNichols v. Pease, 207 U. S. 100 .....3, 5, 13, 15
Marbles v. Creecy, 215 U. S. 63 6
Matter of Davies, 168 N. Y. 89 7
Matter of Gregory, 219 U. S. 210 10
Matter of Strauss, 197 U. S. 324 12
Munsey v. Clough, 196 U. S. 364 ..... 6, 23

PAGE

Ocean Navigation Co. v. Stranahan, 214 U. S. 320 7
Ornelas v. Ruiz, 161 U. S. 502..... 11

People v. Blake, 121 App. Div. (N. Y.) 613; aff'd. 193 N. Y. 616..... 24
People v. Durrin, 2 N. Y. Crim. Rep. 328... 24
People ex rel. Bungart v. Wells, 57 App. Div. (N. Y.) 140 11
People ex rel. Corkran v. Hyatt, 172 N. Y. 176 .....3, 4, 5, 13, 14
People ex rel. Genna v. McLaughlin, 145 App. Div. (N. Y.) 513 12
People ex rel. Ireland v. Woods, 177 App. Div. (N. Y.) 1; aff'd 221 N. Y. Memo. 120 19
Pettibone v. Nichols, 203 U. S. 192..... 8
Pierce v. Creecy, 210 U. S. 387..... 23

Reed v. United States, 224 Fed. Rep. 378, 17, 19, 20, 23
Reggel, Ex parte, 114 U. S. 642.....6, 8, 12, 13
Roberts v. Reilly, 116 U. S. 80 ..... 6, 18

State ex rel. Durner v. Huegin, 110 Wis. 189 11
State ex rel. Munsey v. Clough, 71 N. H. 594 23
Strassheim v. Daily, 221 U. S. 280 19
Stupp, In re, 23 Fed. Cas. (Case No. 13563) 296 10

Terlinden v. Ames, 184 U. S. 270 9
Thompson v. State, 54 Miss. 740 24

United States v. Cook, 17 Wall. 168 24
United States v. O'Brian, 3 Dill. 381 21
United States v. Pridgeon, 153 U. S. 48 .. 10
United States v. Smith, 4 Day (Conn.) 121 21

Williams v. Walsh, 222 U. S. 415..... 9

Textbooks.

Wharton, Crim. Law (11th Ed.), Vol. I, § 44 24

Constitution and Statutes.

	Page
U. S. Const. Art. IV, §2	2, 6, 8, 20
U. S. Rev. Stat. §753 [U. S. Comp. Stat. §1281]	3
U. S. Rev. Stat. §757 [U. S. Comp. Stat. §1285]	4
U. S. Rev. Stat. §760 [U. S. Comp. Stat. §1288]	4
U. S. Rev. Stat. §761 [U. S. Comp. Stat. §1289]	4, 9
U. S. Rev. Stat. §5278 [U. S. Comp. Stat. §10126]	4, 6

Supreme Court of the United States

OCTOBER TERM, 1917

GUY B. BIDDINGER,
Appellant,

against

ARTHUR WOODS, Police Commissioner of the City of New York,
Appellee.

No. 426.

BRIEF IN BEHALF OF THE POLICE COMMISSIONER, APPELLEE.

Statement.

This case comes before this court upon a direct appeal thereto from a final order of the United States District Court for the Southern District of New York, made and entered on December 7, 1916, dismissing a writ of *habeas corpus* and remanding the appellant to the custody of the Police Commissioner of the City of New York, under a rendition warrant of the Governor of the State of New York for his surrender to the State of Illinois as a fugitive from justice—which warrant had been returned as the cause of his detention.

Introductory.

Inasmuch as this case will be presented to the court and the facts thereof discussed by eminent counsel representing the state of Illinois, the demanding state, we shall confine ourselves to submitting two propositions of law which, if accepted as sound, will, we believe, be determinative of the cause and necessitate an affirmance of the order.

These propositions are:

I. The review by the judiciary of an executive warrant of interstate rendition is limited to ascertaining whether the judisdictional facts upon which the authority of the executive to issue the warrant depended were made to appear before him. The courts are not authorized to try *de novo*, upon evidence presented to them, the question of fact whether the accused was a fugitive from justice. To do so is beyond the scope of their functions and would constitute an impingement by the judiciary upon a function confided to the executive.

II. Assuming that the courts may, upon evidence presented *de novo* to them, determine the question of fact whether the accused was a fugitive from justice, the evidence offered in this case was properly excluded as irrelevant to that proposition.

We shall discuss these propositions in their order.

POINT I.

The review by the judiciary of an executive warrant of interstate rendition is limited to ascertaining whether the jurisdictional facts upon which the authority of the executive to issue the warrant depended were made to appear before him. The courts are not authorized to try de novo, upon evidence presented to them, the question of fact whether the accused was a fugitive from justice. To do so is beyond the scope of their functions, and would constitute an impingement by the judiciary upon a function confided to the executive.

We may say at the outset that we do not dispute the authority of the judiciary to *review* the action of the executive in issuing an interstate rendition warrant (*People ex rel Corkran* v. *Hyatt*, 172 N. Y., 176; *Hyatt* v. *Corkran*, 188 U. S. 691) nor that *habeas corpus* is a proper procedural method of procuring such review (*McNichols* v. *Pease*, 207 U. S. 100, 109). Our consideration of the matter will be directed to determining the *extent* of such review in the light of certain principles which we shall discuss in the course of the argument.

To entitle the prisoner to a release by *habeas corpus* it must have been made to appear that he was "* * * in custody in violation of the constitution or of a law * * * of the United States * * *" —for otherwise the writ does not extend to him (U. S. Rev. Stat. § 753; U. S. Comp. Stat. §1281).

The statutes relating to the subject provide that the person to whom the writ is directed shall certify "the true cause of the detention" of the prisoner (U S. Rev. Stat. § 757; U. S. Comp. Stat. § 1285); that the prisoner may deny any of the facts set forth in the return or may allege any other facts that may be "material in the case" (U. S. Rev. Stat. § 760; U. S. Comp. Stat. § 1288); that upon the hearing of the writ "the court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require" (U. S. Rev. Stat. § 761; U. S. Comp. Stat. § 1289).

To what extent does this statutory provision authorize inquiry in such a case as this? What are "the facts of the case" which the court below was called upon to determine?

In seeking the answer to this question let it be borne in mind *in limine* that interstate rendition is fundamentally an EXECUTIVE function (U. S. Const., Art. IV, § 2; U. S. Rev. Stat. § 5278; U. S. Comp. Stat. § 10126; *Farrell* v. *Hawley*, 78 Conn. 150, 153) and this notwithstanding that, in some respect, the Governor, in the performance of the function, acts JUDICIALLY (*People ex rel Corkran* v. *Hyatt*, 172 N. Y. 176; *Hyatt* v. *Corkran*, 188 U. S. 691).*

The executive duty to issue a surrender warrant in interstate rendition is made to depend upon the conditions precedent (1) that the person de-

* Indeed, with respect to every administrative duty, the performance of which is imposed by positive law upon the existence of prescribed conditions, the administrative officer must make a preliminary determination as to whether the conditions in fact exist; and in so doing he acts judicially.

manded is charged with a crime and (2) that he is a "fugitive from the justice" of the demanding state. The Governor in determining preliminarily whether these conditions exist in fact, acts, to that extent, judicially. If his determination be that these conditions do exist he must, pursuant to positive law, issue his warrant. In that act he performs a purely EXECUTIVE function.

The performance of the function being judicial in character to the extent we have indicated, and entailing through its execution an ultimate restraint of personal liberty, the power of the officer to act may be tested by the procedural method of *habeas corpus* (*People ex rel. Corkran* v. *Hyatt*, 172 N. Y. 176; *Hyatt* v. *Corkran*, 188 U. S. 691; *McNichols* v. *Pease*, 207 U. S. 100, 109). So much may be, and is, freely conceded. The proposition with which we are concerned is the *extent* to which the Federal judiciary may review and re-examine the action of the executive done in the performance of this function—when its jurisdiction is invoked by *habeas corpus?*

We contend that the inquiry—notwithstanding that there are numerous *dicta* indicating that it may take a wider range—is limited to ascertaining whether the evidence presented to the Governor, justified, as conclusions of fact and law, his finding that the conditions precedent existed upon which the issuance of the executive warrant depended; and that to permit the court to try *de novo*, upon evidence presented to it, the question whether the prisoner was in fact a fugitive from justice, would work (1) an illegal encroachment upon a function devolved upon another branch of government and (2) an extension of the function of the writ of *habeas corpus* beyond its legitimate and prescribed scope.

1. The situation confronting the judiciary in a case of this kind is not unlike that which confronts it when it is called upon to pass upon the validity of an act of legislation. Its duties and responsibilities are fulfilled when it determines whether the legislature acted within the sphere of its constitutional authority—or, in other words, within its jurisdiction.

Interstate rendition is, as we have said, an executive function—a function devolved upon the executive authority of the State by positive Federal law (U. S. Const. Art. IV, § 2; Act of Feb. 12, 1793; U. S. Rev. Stat., § 5278 [U. S. Comp. Stat., § 10126]; *Kentucky* v. *Dennison*, 24 How. 66; *Drew* v. *Thaw*, 235 U. S. 432, 439; *Innes* v. *Tobin*, 240 U. S. 127).

By the provisions of Federal law governing the subject—which, so far as they cover the field, are controlling and exclusive (*Innes* v. *Tobin*, 240 U. S. 127)—the surrender of a person by one state to another is by necessary implication prohibited unless he was a "fugitive from the justice" of the demanding state (*Innes* v. *Tobin*, 240 U. S. 127, 131). That is one of the conditions precedent to the issuance of the executive warrant. But the responsibility for the determination of that fact rests upon the EXECUTIVE AUTHORITY of the state in which the accused is found (*Ex parte Reggel*, 114 U. S. 642, 651-652; *Roberts* v. *Reilly*, 116 U. S. 80, 95; *Hyatt* v. *Corkran*, 188 U. S. 691; *Munsey* v. *Clough*, 196 U. S. 364, 372; *Marbles* v. *Creecy*, 215 U. S. 63, 67-68; *Farrell* v. *Hawley*, 78 Conn. 150, 153). To him the function is confided. He determines whether the facts exist which justify a surrender. The court reviewing his action determines whether the

facts before him were sufficient *in law* to justify *his* action—to give him jurisdiction. Having done so its responsibility is fulfilled and its authority ended.

To each department of government—executive, legislative and judicial—has been entrusted the performance of certain well-defined functions. Each has its own duties, its own responsibilities. For the successful working of this system it is essential that there be no encroachment upon or usurpation of the powers or functions confided to any one of these departments by either of the others. To each must be preserved within its prescribed sphere a liberty of action commensurate with the responsibility imposed upon it. To suppose that harm will follow if the executive department be permitted full sway within its constitutional sphere, and that, hence, it behooves the judiciary to apply a corrective by exceeding its own authority, is mistakenly to assume that the courts can alone be safely entrusted with power and must, therefore, do wrong upon the assumption that by so doing they will prevent wrong being accomplished.

Ocean Navigation Co. v. *Stranahan,* 214 U. S. 320, 340.
McCray v. *United States,* 195 U. S. 27, 54, 55.
Kilbourn v. *Thompson,* 103 U. S. 168, 190-191.
Matter of Davies, 168 N. Y. 89, 101-102.

The warrant of the Governor is *prima facie* evidence that the prerequisites to its issuance existed. It is not conclusive. The prisoner may go behind it—and show that the Governor did not

have before him legal evidence of which to predicate the conclusion that the facts essential to its issuance existed, and was, hence, without jurisdiction (*Ex parte Reggel*, 114 U. S. 642, 651-653). If, upon proof of what the proceedings before the Governor consisted, it appears that there was evidence before him to justify the conclusion that the jurisdictional facts existed, the presumption created by the executive warrant becomes conclusive—for then it appears that the jurisdictional facts existed before the officer upon whom the responsibility for their determination was imposed by law (*In re Strauss*, 126 Fed. Rep. 327, 329, 331; aff'd. 197 N. Y. 324). Having so determined the function of the court is exhausted.*

2. Nor does *habeas corpus*, potent through that process may be, operate to extend its powers.

Mr. Justice Holmes has recently pointed out that the constitution "says nothing about *habeas corpus*" in connection with the subject of interstate rendition—that it "peremptorily requires that upon proper demand the person charged shall be delivered up to be removed to the State having jurisdiction of the crime" (*Drew* v. *Thaw*, 235 U. S. 432, 439; U. S. Const., Art. IV, § 2). [See also *Pettibone* v. *Nichols*, 203 U. S. 192, 205.] The statutes relating to inter-state rendition make no provision for a review of the action of the execu-

* Of course, the determination of the question whether a person is a "fugitive from justice" presents a question of law as well as one of fact. Whether the facts proved suffice to constitute a person a "fugitive from justice" within the meaning of the law of interstate rendition is a question of law. But the point we make is that the judiciary is limited to ascertaining whether the evidence before the governor warranted the legal conclusion—that it cannot re-try the question of fact upon new evidence taken by it; that to do so is outside the scope of its functions.

tive, and what cannot be done directly cannot be done indirectly by *habeas corpus* (*Terlinden* v. *Ames*, 184 U. S. 270, 278).

The function of a writ of *habeas corpus* is to determine whether, viewing the actual proceedings before the officer by whose process the prisoner is detained, he acted within his jurisdiction in issuing it—*i. e.*, whether, by reason of what *there* occurred, authority to issue the process existed—and was not defeated by any occurrence *there* which would render the proceedings *coram non judice*. The court upon *habeas corpus* may go behind a process seemingly valid upon its face. It may go behind the "record" and look into the actual proceedings—*i. e.*, "the facts of the case" —and having done so and seen that they conferred jurisdiction, of which there was no defeasance by anything there occurring, its power of review ends—the function of the writ of *habeas corpus* is fulfilled (*Frank* v. *Mangum*, 237 U. S. 309, 331).

The writ cannot be used to procure a new trial (*Williams* v. *Walsh*, 222 U. S. 415, 422; *Glasgow* v. *Moyer*, 225 U. S. 420, 428-429).—Whether the process of detention is "final" or "preliminary" is in the ultimate analysis of no consequence. The nature of the process may require the application of a specific test; but the ultimate inquiry is whether the proceedings before the functionary issuing the process sufficed to give him jurisdiction to issue it—applying the appropriate test.

The direction contained in the *habeas corpus* statute (U. S. Rev. Stat. § 761; U. S. Comp. Stat. § 1289) that the court or judge shall determine "the facts of the case" means that he shall determine what the facts and proceedings before

the officer, the validity of whose process is drawn in question, actually were. Those are the "facts of the case" which the court is required to ascertain in order to determine whether the process of detention is valid (*In re Stupp*, 12 Blatch. 501, 506-507; 23 Fed. Cas. [Case No. 13563] 296, 298-299, Blatchford, J.). By *them* it must determine the existence or non-existence of jurisdiction—for obviously the jurisdiction of the functionary to issue the process must necessarily depend upon what took place before him—and not at all upon new evidence or additional facts presented or sought to be presented to the court concerning the matters which were in issue before the officer or tribunal by whom the process was issued, and by him determined.

Without attempting an elaborate analysis, it might be said that in the case of a final judgment the test of jurisdiction is whether the accused was before the court by whose judgment he is detained and was charged with and convicted of an offense within the class of offenses which the court was authorized to hear and determine, and that the sentence—judgment—pronounced was authorized for the cause assigned, and that there was no occurrence which defeated the jurisdiction by rendering the proceedings *coram non judice*.

Frank v. *Mangum*, 237 U. S. 309.
Matter of Gregory, 219 U. S. 210.
Kaizo v. *Henry*, 211 U. S. 146.
United States v. *Pridgeon*, 153 U. S. 48, 59, 63.
Ex parte Lange, 18 Wall. 163.

In the case of a commitment for trial, or other like preliminary process, the test of jurisdiction in the magistrate or commissioner is to ascertain

whether the evidence before him sufficed to show the existence of the conditions precedent upon which his authority to commit or bind over depended—probable cause.* The court hearing the *habeas* cannot supplement the proceedings by taking additional evidence with a view to making a new determination of the issues. Having ascertained that there was competent evidence before the magistrate, permitting his conclusions that the jurisdictional prerequisites existed its function ends.

The jurisdiction of the officer making the commitment being established by reference to what took place *before him*, the inquiry under the writ of *habeas corpus* ends—for then there is no unconstitutional or unlawful restraint.

Benson v. McMahon, 127 U. S. 457, 463.
Ornelas v. *Ruiz*, 161 U. S. 502, 508.
McNamara v. *Henkel*, 226 U. S. 520, 523.
Charlton v. *Kelly*, 229 U. S. 447, 456, 460-461.
Horner v. *United States*, 143 U. S. 570.
People ex rel Bungart v. *Wells*, 57 App. Div. [N. Y.] 140, 147, 149, 151
State ex rel. Durner v. *Huegin*, 110 Wis. 189, 236 *et seq.*
Ex parte Bollman, 4 Cranch. 75.

An interstate rendition warrant is closely assimilated to a commitment for trial. Rendition is "but one step in securing the presence of the defendant in the court in which he may be

* In such cases there is, in truth, an admixture of a judicial and an administrative function. The magistrate, in determining whether the conditions precedent exist, acts judicially. His committal of the prisoner is administrative.

tried"* (*Matter of Strauss*, 197 U. S. 324, 333). The function is an administrative—an executive one. The Governor determines the facts. The responsibility for their determination is his—and his alone (*Ex parte Reggel*, 114 U. S. 642, 652). The judicial review of his action is limited to the single question whether the proceedings before him gave him JURISDICTION to issue his warrant. By the evidence before *him* his jurisdiction must be tested; and by that alone. If the evidence before him justified his action, the courts cannot review or re-examine his findings (*In re Strauss*, 126 Fed. Rep. 327, 329, 331; aff'd. 197 U. S. 324). Applying the legal definition as to what constitutes a "fugitive from justice" in interstate rendition, the court was empowered to say whether or not the evidence before the governor, however meagre it might be, warranted, in fact and in law, the governor's conclusion that the prisoner was a fugitive from justice. Further than that it could not legally go. It could not retry the issue on evidence taken before itself. That was foreign to its functions.

Many cases involving the validity of interstate rendition warrants have come before this court in *habeas corpus* proceedings; and there are expressions in some of the opinions which have sometimes been taken by courts of first instance and, upon occasion, by Appellate State Courts (*vid. People ex rel. Genna* v. *McLaughlin*, 145 App. Div. [N. Y.] 513), to mean that a prisoner held in cus-

* The provision that the act of removal of an accused person from one state to another should be effected by a surrender warrant of the executive authority of the state in which he was found, rather than that the process of a state should run beyond its territorial boundary, was due to the complex nature of our government and a recognition of state sovereignty (*Kentucky* v. *Dennison*, 24 How. 66, 100 *et seq.*).

tody under a rendition warrant may show in a *habeas corpus* proceeding, by proof of facts extraneous to what was shown before the Governor, that he was not in fact a fugitive from justice, with a view to having the court determine that question for itself upon evidence adduced before it. Such a view is, we submit, fundamentally unsound, and has no support in the DECISIONS of this court, properly interpreted.

The cases most frequently referred to as supporting this proposition are: *Ex parte Reggel* (114 U. S. 642), *Hyatt* v. *Corkran* (188 U. S. 691) and *McNichols* v. *Pease* (207 U. S. 100). But we believe it will be found upon a critical examination of the cases in this court that in none of them is there an express holding to the effect that a prisoner may present to the court hearing the *habeas corpus* evidence other than to show that the evidence and proceedings before the Governor were insufficient in fact and in law to warrant a finding that he was legally charged with a crime and was a "fugitive from justice."

Beginning with the case of *Ex parte Reggel* (114 U. S. 642), it will be found [pp. 651-653] that the proposition there discussed by the court concerned an alleged *lack of evidence before the Governor* upon the question.

In the *Corkran-Hyatt* case (188 U. S. 691) the extradition of the prisoner was sought upon the specifically asserted claim that "constructive presence" in the demanding state would suffice to render an accused person extraditable; and the concession of the parties which was placed upon the record was obviously taken to mean that no evidence of the physical presence of the accused in the demanding state had been presented to the Gov-

ernor, but on the contrary that the surrender was sought and the warrant issued upon the specific theory that a "constructive presence" in the demanding state would suffice (*People ex rel. Corkran* v. *Hyatt*, 172 N. Y. 176, 188; *Hyatt* v. *Corkran*, 188 U. S. 691, 710). This court pointed out that "the question whether the person demanded was a fugitive from the justice of the State was a question of fact which the Governor, upon whom the demand was made, must decide upon such evidence as *he* might deem necessary" [p. 710]. It recognized and reasserted the right of the courts, either State or Federal, to review the Governor's action with a view to ascertaining whether the jurisdictional facts existed and to discharge the prisoner if the proceedings upon which the executive warrant had been issued were found to be defective and insufficient [p. 710]. But to review the proceedings before the Governor to ascertain whether the jurisdictional facts were shown is one thing. The re-trial of the issues by the courts upon new evidence is another—and an unauthorized thing. The determination of the fact whether the accused is a fugitive from justice being devolved upon the Governor, it is before him, and before him alone, that the evidence bearing upon the issue must be presented. The duty and responsibility of determining the issue of fact is his and his alone. This is his function. The function of the court is to determine whether a case was made before the Governor which, in law, justified his action—which conferred jusisdiction upon him. The *Corkran-Hyatt* case decided nothing more.

The situation before this Court was this. The New York Court of Appeals having decided that the prisoner should be discharged because there

was no evidence before the Governor to warrant a finding that the jurisdictional fact existed, this Court was called upon, on writ of error in behalf of the State, to determine whether the decision of the New York court was correct. This Court decided that it was correct and affirmed its order. But the case cannot be taken as an authority for the proposition that the courts are empowered in *habeas corpus* proceedings to supersede the Governor and to decide *de novo* upon evidence presented to them whether the person demanded was in fact a fugitive from justice.

So also, in *McNichols* v. *Pease* (207 U. S. 100), when the court speaks *obiter* of the right of the prisoner to question the lawfulness of his arrest and imprisonment "showing by competent evidence as a ground for his release that he was not, within the meaning of the Constitution and laws of the United States, a fugitive from the justice of the demanding state, and thereby overcoming the presumption to the contrary arising from the face of the extradition warrant," we submit that this statement means, not that the prisoner can call upon the court to re-try and decide that issue of fact, but merely that he may call upon the court to determine whether upon the evidence adduced before the Governor there was a basis, in fact and in law, for his conclusion that the accused was a fugitive from the justice of the demanding state within the meaning of the Constitution and laws of the United States. The prisoner may show by competent evidence what the proceedings before the executive actually were, and he may ask the court to determine, by reference to those proceedings, whether or not the jurisdictional facts necessary to the issuance of the warrant were made to

appear to the executive authority—whether the conditions precedent to the performance of the function devolving upon him were shown to him to exist. If the *dicta* in the case were intended to go further, we submit that they are unsound—because, to permit the court to try *de novo*, upon evidence presented to it, the question whether the accused was a fugitive from justice would (1) lead to an unlawful usurpation by the judiciary of a function of the executive, and (2) be, in effect, the granting of a new trial and thus an unauthorized departure from the function of the writ of *habeas corpus*.

Consequently, the evidence offered below was inadmissible because irrelevant to any issue within the legitimate scope of the *habeas corpus* proceeding. It did not relate to "the facts of the case" which the court hearing the *habeas* was authorized or empowered to determine.

POINT II.

Assuming that the courts may, upon evidence presented de novo to them, determine the question of fact whether the accused was a fugitive from justice, the evidence offered in this case was properly excluded as irrelevant to that proposition.

The contention put forward by the appellant is, in substance, that a person who remains in the demanding state, openly and publicly a resident thereof, for such a length of time, subsequent to the commission of the crime, as would, under the statute of limitations, bar a prosecution for the offense, does not, by a subsequent departure from

the state, become a fugitive from justice, within the meaning of the law of interstate rendition.

His main reliance is put upon the case of *Bruce* v. *Rayner* (124 Fed. Rep. 481), in which it was held that evidence to the effect that the accused did so remain in the state would be relevant and admissible to prove that he was not a fugitive from justice. Directly opposed to the decision in that case is the decision in *Reed* v. *United States* (224 Fed. Rep. 378, 140 C. C. A. 64), in which it was specifically held that evidence that the accused remained openly and publicly within the demanding state for a time outrunning the period of limitation was irrelevant to the question as to whether or not he was a fugitive from justice, as that term is used in the law of interstate rendition; and that such evidence, even though tendered for that precise purpose, was properly excluded.

An examination of the brief of the appellant's counsel in *Reed* v. *United States* (*supra*) shows that his contention was based fundamentally upon the decision in *Bruce* v. *Rayner* (*supra*). That case was discussed at length in his brief, and he quoted extensively from the opinion. The case of *Bruce* v. *Rayner* was again elaborately pressed upon the court's attention upon a petition for a rehearing—as the petition shows. A rehearing was denied (See Note, 140 C. C. A. 64). The case having been insistently pressed upon the court's attention, the fair inference from the fact that it is not referred to in the opinion in the *Reed* case is that the court did not regard it as authoritative or sound.

The conclusion reached in *Bruce* v. *Rayner* is, indeed, based upon a false premise—upon a mis-

conception of the meaning of the term "fugitive from justice" as used in the law of interstate rendition, and a confusion of the meaning of that term in interstate rendition law with its meaning in an unrelated statute.

What constitutes a "fugitive from justice" within the meaning of the law of interstate rendition has been so many times declared that it now becomes possible to give, with substantial certainty, a composite definition of the term:

A person who was physically present in the demanding state at the time that an act was, if ever, committed, or during the time that a condition, if ever, existed, which constitutes the whole or part of the basis of a criminal charge against him, and who, subsequent to such presence, departs from the state, is, irrespective of the circumstances under which he departed, or of his motives in departing, a fugitive from justice, within the meaning of the law of interstate rendition.

More briefly and less analytically stated, it might be said that a person who was physically present in the demanding state at the time that the crime of which he is accused was, if ever, committed or in the course of commission, and who departs from the state so that [not in order that] * he cannot be reached by its criminal process, is a fugitive from justice within the meaning of the law.

Roberts v. *Reilly*, 116 U. S. 80, 95.
Appleyard v. *Massachusetts*, 203 U. S. 222, 229, 231.
Bassing v. *Cady*, 208 U. S. 386, 392.
Drew v. *Thaw*, 235 U. S. 432, 439.

* It is the consequence of departure that is material, not the purpose.

Kingsbury's Case, 106 Mass. 223, 227, 228.

Reed v. *United States*, 224 Fed. Rep. 378, 381.

It is sometimes stated that one who "commits a crime" within a state and thereafter departs therefrom is a fugitive from justice. This is an instance, not a definition. The question is not whether he *committed* a crime. That is a question which goes to his guilt or innocence—which is never open to inquiry in extradition proceedings. The question is whether he was physically present in the demanding state at the time that the crime of which he is *accused* was (if ever) committed, and afterwards departed.

The circumstances surrounding the departure are not material (*Bassing* v. *Cady*, 208 U. S. 386, 392). The purpose of the departure is not material. That the person had no conscious purpose of avoiding arrest or prosecution, or no consciousness of having committed a crime, makes no difference (*Appleyard* v. *Mass.*, 203 U. S. 222, 227, 231; *Duddy's Case*, 219 Mass. 548, 550). There can be no inquiry into motives (*Drew* v. *Thaw*, 235 U. S. 432, 439). It is not necessary that the accused should have been in the state when the whole crime was committed. It is enough that he was there when part of it was committed (*Strassheim* v. *Daily*, 221 U. S. 280), or, in cases of continuous crimes, like conspiracy for example, that he was there some time during the period of continuity (*Ex parte Hoffstott*, N. Y. L. J., May 24, 1910 [Hughes, G.]; 180 Fed. Rep. 240; 218 U. S. 665; *People ex rel. Ireland* v. *Woods*, 177 App. Div. [N. Y.] 1; aff'd. 221 N. Y. memo. 120).

In short, a general review of the authorities shows that what constitutes a fugitive from justice is the physical presence at the time of the commission of the crime, followed by departure.

The underlying theory—and it is fundamentally upon this theory that the doctrine of "constructive presence" as an insufficient basis for surrender rests—is that if the alleged fugitive was within the territorial jurisdiction of the state where the crime was committed, so that, had he remained there he would have been within reach of its criminal process, he does not secure immunity from arrest by passing over an imaginary line into the territory of another state. He shall "be delivered up to be removed to the state having jurisdiction of the crime." Such is the command of the constitution (U. S. Const., Art. IV, § 2; See *Kentucky* v. *Dennison*, 24 How. 66, 100; *Drew* v. *Thaw*, 235 U. S. 432, 439).

It will be seen, then, that what underlay the decision of the Circuit Court of Appeals in *Reed* v. *United States* (*supra*) was a clear conception of the meaning of the term "fugitive from justice" as understood in the law of interstate rendition, and that the fallacy in *Bruce* v. *Rayner* (*supra*) was that the court there confused the meaning of that term as used in interstate rendition law with its meaning in relation to the suspension of the running of the statute of limitations in the local jurisdiction.

Almost universally the statutes relating to limitation provide, by way of exception, that the limitation shall not extend to persons who were not usually and publicly resident in the state during the period, or, embodying the same idea in other words, to persons "fleeing from justice,"

as in the New Jersey statute involved in *Bruce* v. *Rayner*. "Fleeing from justice," within the meaning of provisions such as those does not necessarily involve a departure from the territorial jurisdiction at all. It would be enough to bring the defendant within the exception that he concealed himself within the territorial jurisdiction to avoid arrest (*United States* v. *O'Brian*, 3 Dill, 381, 384; *Lay* v. *State*, 42 Ark. 105, 110); and conversely, if a person leaves the jurisdiction of the state in which he has committed a crime, but for some reason other than that of avoiding arrest, he does not "flee from justice" within the meaning of the exception in statutes of limitation (*United States* v. *Smith*, 4 Day [Conn.] 121). But in interstate rendition the act of departure, *irrespective* of the purpose that underlay it, or the circumstances surrounding it, is what constitutes the person a "fugitive from justice" [See cases cited *ante*, p. 18]; and obviously, concealment within the jurisdiction of the crime could never constitute one a fugitive from justice as respects rendition.

A very different meaning, then, attaches to the phrase "fleeing from justice" as used in the statutory exception to the laws prescribing limitation of offenses and the term "fugitive from justice" as known in the law of interstate rendition. The reason for this difference of meaning at once appears when regard is had to the policy of the law. The policy of the statutory exception is to deny to a man who has incurred through his conduct liability to penal justice, the advantages which the law, because of the dissipation of evidence through lapse of time, would otherwise allow him, when he himself has, by his voluntary conduct, made both the lapse of time and the dis-

sipation of evidence possible. The policy of the statute requiring the return of an accused person to the jurisdiction of his wrongdoing is almost the reverse. It seeks to bring the issues of the defendant's wrongdoing to prompt hearing in the tribunals of the jurisdiction. The policy of the exception in limitation statutes is to extend the time of trial; that of the interstate rendition statute is to hasten the time of trial.

A careful reading of the opinion in *Bruce* v. *Rayner* shows that the learned judge who wrote it failed to appreciate the distinction between the meaning of the term "fleeing from justice" in these different connections, and that he, in fact, for the purpose of his decision, construed and applied the term as it is used in connection with the exception in the limitation statute, and thus erroneously reached the conclusion that the prisoner would not be, under the circumstances sought to be proved, a "fugitive from justice" for the purpose of rendition (*vid. Bruce* v. *Rayner*, 124 Fed. Rep. 481, 485-486). He applied the wrong test.

The learned judge who wrote the opinion in the *Reed* case, on the other hand, having an accurate conception of what constituted a fugitive from justice in the law of interstate rendition, rightly concluded that the fact that the prisoner remained in the state until the period of limitation had run had no relevancy to the proposition—for, while that might constitute him not a fugitive from justice so as to bring him within the limitation statute and outside its exception (a matter to be decided by the trial courts on the facts), it would have no bearing upon the proposition whether or not he was a fugitive from justice for the purpose of an interstate surrender.

The distinction between the meaning of the terms in these two connections is also clearly recognized in *Depoilly* v. *Palmer* (28 App. D. C. 324, 329-330), which is in accord with the *Reed* case.

Other cases which, by fair implication, if not directly, support the proposition that the question as to whether the statute of limitations has or has not run is of no materiality in the determination of such a case as is here presented, are:

State ex rel. Munsey v. *Clough*, 71 N. H. 594, 601—*Munsey* v. *Clough*, 196 U. S. 364.

Dennison v. *Christian*, 72 Neb. 703—affd. 196 U. S. 637.

Pierce v. *Creecy*, 210 U. S. 387, 403, 404.

The cases which are cited by the appellant, such as *In re Kuhns* (36 Nev. 487) and *Kemper* v. *Metzger* (169 Ind. 112), do not even remotely support his position.

In the *Kuhns* case (*supra*), while there is a reference to *Bruce* v. *Rayner*, for what purpose it is made it is difficult to discover. The discharge of the prisoner seems to have been ordered partly upon the theory that the court did not believe that he was guilty of an offense and that it thought if the sister state of Pennsylvania, the demanding state, had known all the facts she would not have asked for extradition. The court, however, ultimately put its decision upon the ground that the prisoner was not in the demanding state at the time of the commission of the alleged crime.

In *Kemper* v. *Metzger* (*supra*) there is a somewhat vague statement in the opinion to the effect that if a prisoner desired to show that the prosecution was barred by the statute of limitations, the

proper thing for him to do was to set it up by answer and prove it. This seems to have had reference to a question of pleading, but the Court did not pass upon the proposition as to whether such evidence would be admissible or would have any effect to bar rendition.

The statute of limitations in criminal law is essentially a matter of defense (*Thompson* v. *State*, 54 Miss. 740, 744)—though going to the punishibility rather than to the guilt (Wharton, Crim. Law [11th Ed.], Vol. I, § 44). The rules with respect to pleading exceptions to the statute vary in the different states. In some states it is not necessary that the indictment should plead the exception where the time laid is, on its face, beyond the period of limitation. (*People* v. *Durrin*, 2 N. Y. Crim. Rep. 328; *People* v. *Blake*, 121 App. Div. [N. Y.] 613; aff'd 193 N. Y. 616; *United States* v. *Cook*, 17 Wall. 168; *Thompson* v. *State*, 54 Miss. 740). In others the exception, under such circumstances, is required to be pleaded in the indictment (*McLane* v. *Georgia*, 4 Ga. 335).

The latter is the rule in the State of Illinois (*Church* v. *People*, 10 Ill. App. 222; *Lamkin* v. *People*, 94 Ill. 501). The statute of limitations is there regarded as, in a sense, entering into the substantive definition. The pleading of the exception is an essential part of the charge. Consequently, the question whether or not the defendant comes within the statute of limitations or within the exception is a matter of fact for the determination of the trial court upon the trial of the case. Indeed, that may be said to be true in all jurisdictions irrespective of their varying rules of pleading. The defense of the statute may be established under the plea of not guilty. From

this it follows that to try the question as to whether or not the defendant remained in the State of Illinois, so as to bring him within the exception of the statute of limitations, would be actually to try the question of his guilt or innocence—his liability to punishment for the offense with which he stands charged—something that is wholly outside the scope of extradition proceedings, either before the Governor or before a court reviewing his action by *habeas corpus*.

A case which is very much in point, by analogy, is the recent case of *Drew* v. *Thaw* (235 U. S. 432). In that case Thaw was indicted in New York for conspiracy to obstruct the laws. The substance of the charge was that, being confined in a lunatic asylum, he had conspired with others to make his escape. He attempted to set up in the extradition proceedings the fact of his insanity as constituting a bar to his punishment—that if he was insane at the time the offense was committed he could not be held criminally responsible for the act. This court, in an opinion written by MR. JUSTICE HOLMES, disposed of the contention by pointing out that the proceeding was not Thaw's trial and that the "purpose of the writ" was "not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried," and that how far the consideration that the defendant was a lunatic would affect his criminality was a matter for the New York courts to decide. So in the case at bar the question of Biddinger's residence or non-residence in the State of Illinois, so far as it affects the question of his punishibility for the offenses laid in the indictments, is a question for the courts of Illinois—and for those courts alone—to decide. It had no materiality here.

IN CONCLUSION.

We submit that the propositions which we have advanced are sound in logic and in law and in harmony with the general thought underlying rendition—that it is but a means of procuring the presence of the accused before the court which has jurisdiction of his offense and in no sense determines any matter touching his guilt or innocence, or his liability to punishment. For the reasons which we have advanced, we respectfully submit that

The order dismissing the writ of habeas corpus should be affirmed.

Respectfully submitted,

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October, 1917.

14

BIDDINGER *v.* COMMISSIONER OF POLICE OF THE CITY OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 426. Argued October 10, 11, 1917.—Decided November 5, 1917.

Article IV, § 2, of the Constitution intends, not to express the law of extradition as usually prevailing among independent nations, but to provide a summary executive proceeding whereby the States may promptly aid one another in bringing accused persons to trial. Its

provisions, and the statutes passed in execution of them, should be construed liberally to effectuate this purpose.

A person indicted in due form for an offense against the laws of a State, who was present in that State at the time when the offense is so alleged to have been committed and subsequently leaves it, becomes, within the meaning of the Federal Constitution and laws, a fugitive from justice; and upon the making of demand, accompanied by certified papers, as required by § 5278 of the Revised Statutes, the governor of the State in which he is found must cause him to be arrested and delivered for extradition into the custody of the authorized agent of the State whose laws are alleged to have been violated.

An accused person arrested in interstate extradition proceedings, who sues out *habeas corpus* to obtain his discharge on the ground that he is not a fugitive from justice, is not entitled to introduce evidence to prove that after the date of the alleged offense he was "usually and publicly resident" within the demanding State for a time sufficient to bar the prosecution under its limitation statutes. The statute of limitations is a defense and must be asserted on the trial by the defendant in criminal cases; and this court has frequently decided that matters of defense can not be heard on *habeas corpus* to test the validity of an arrest in extradition, but must be heard and decided, at the trial, by the courts of the demanding State.

Affirmed.

THE case is stated in the opinion.

Mr. Walter H. Pollak, with whom *Mr. Charles H. Griffiths* and *Mr. Moses H. Grossman* were on the brief, for appellant.

Mr. Louis Marshall and *Mr. Robert S. Johnstone*, with whom *Mr. Edward Swann*, *Mr. George F. Turner* and *Mr. Isidor J. Kresel* were on the briefs, for appellee.

MR. JUSTICE CLARKE delivered the opinion of the court.

In various indictments returned in the State of Illinois on May 5th, 1916, against appellant, Guy B. Biddinger, he was charged with having committed crimes in that

State at various times between the 15th day of October, 1908, and the 2nd day of September, 1910. Each of these indictments contained the allegation required by the Illinois practice that "the said Guy B. Biddinger since the 10th day of May, 1911, and from thence hitherto, was not usually and publicly a resident within this State of Illinois."

Transmitting the papers required by the United States statutes, duly certified, the Governor of Illinois demanded of the Governor of New York the extradition of Biddinger as a fugitive from justice. The Governor of New York, after according the accused a full hearing, issued to the Commissioner of Police of the City of New York an executive warrant for his arrest and delivery to the agent authorized to receive and convey him to Illinois, there to be dealt with according to law. Upon this warrant the appellant was taken into custody.

Thereupon, on the petition of the appellant, a writ of *habeas corpus* issued from the District Court for the Southern District of New York, and the Commissioner of Police, making return thereto, gave the executive warrant as his justification for the imprisonment and detention of the accused. An elaborate traverse was filed to this return, but, upon the hearing, the court discharged the writ and remanded Biddinger to the custody of the appellee.

On appeal to this court thirty-five errors are assigned, but on argument only one is relied upon, viz: The action of the District Court in excluding evidence offered to prove that the accused had been, publicly and usually resident within the State of Illinois continuously for more than three years after the dates on which he was charged with having committed the crimes. This evidence was tendered for the claimed purpose of proving that Biddinger was not a fugitive from justice and therefore was not subject to extradition.

This claim of error requires the consideration of § 2 of Art. IV, of the Constitution, and of § 5278 of the Revised Statutes, of the United States, as well as §§ 315 and 317 of the statutes of the State of Illinois, which read as follows:

Constitution, Art. IV, § 2: "A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

United States Revised Statutes, § 5278: "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. . . ."

The statutes of Illinois [Hurd's Rev. Stats., 1915–16] are:

Section 315. "For other felonies. § 3. All indictments for other felonies [including the crimes charged] must be found within three years next after the commission of the crime, except as otherwise provided by law."

Section 317. "Time of absence not counted. § 5. No period during which the party charged was not usually

and publicly resident within this state shall be included in the time of limitation."

Relying upon these constitutional and statutory provisions, the argument is pressed upon our attention with much plausibility that one who continues "usually and publicly" resident within the State of Illinois for a longer period than that within which, under the laws of that State, he may be prosecuted for the crimes charged, cannot, with due regard to the meaning of the language used, be said to "flee" or "to have fled," from justice, or to be "a fugitive from justice" if he afterwards leaves that State and is found in another.

Thus is presented the question whether the order remanding the accused into custody to be conveyed to the State of Illinois for trial is in violation of the rights secured to him by the Federal Constitution and laws which we have quoted.

The provision of the Federal Constitution quoted, with the change of only two words, first appears in the Articles of Confederation of 1781, where it was used to describe and to continue in effect the practice of the New England Colonies with respect to the extradition of criminals. *Kentucky* v. *Dennison*, 24 How. 66. The language was not used to express the law of extradition as usually prevailing among independent nations but to provide a summary executive proceeding by the use of which the closely associated States of the Union could promptly aid one another in bringing to trial persons accused of crime by preventing their finding in one State an asylum against the processes of justice of another. *Lascelles* v. *Georgia*, 148 U. S. 537. Such a provision was necessary to prevent the very general requirement of the state constitutions that persons accused of crime shall be tried in the county or district in which the crime shall have been committed from becoming a shield for the guilty rather than a defense for the innocent, which it was intended

to be. Its design was and is, in effect, to eliminate, for this purpose, the boundaries of States, so that each may reach out and bring to speedy trial offenders against its laws from any part of the land.

Such being the origin and purpose of these provisions of the Constitution and statutes, they have not been construed narrowly and technically by the courts as if they were penal laws, but liberally to effect their important purpose, with the result that one who leaves the demanding State before prosecution is anticipated or begun, or without knowledge on his part that he has violated any law, or who, having committed a crime in one State, returns to his home in another, is nevertheless decided to be a fugitive from justice within their meaning. *Roberts* v. *Reilly*, 116 U. S. 80; *Appleyard* v. *Massachusetts*, 203 U. S. 222; *Kingsbury's Case*, 106 Massachusetts, 223.

Courts have been free to give this meaning to the Constitution and statutes because in delivering up an accused person to the authorities of a sister State they are not sending him for trial to an alien jurisdiction, with laws which our standards might condemn, but are simply returning him to be tried, still under the protection of the Federal Constitution but in the manner provided by the State against the laws of which it is charged that he has offended.

The discussion of these provisions of the Constitution and statutes for now much more than a century has resulted in the formulation of this conclusion, more than once announced by this court (*Appleyard* v. *Massachusetts*, 203 U. S. 222, 227):

"A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime leaves the State—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within

the meaning of the Constitution and the laws of the United States, a fugitive from justice, and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the State from which the accused departed. Such is the command of the Supreme law of the land, which may not be disregarded by any State."

The appellant admits: That he was in the State of Illinois at the time it is charged that he committed the crimes for which he was indicted; that the indictments are in the form, and are certified as, required by law, and that he was found in the State of New York. This satisfies the requirement of the statute and by its terms makes it the duty of the Governor of New York to cause Biddinger to be arrested and given into the custody of the Illinois authorities.

With these facts and this legal history before us, what shall be said of the claim that in a *habeas corpus* hearing the court erred in not permitting the appellant to introduce evidence tending to prove that the prosecution was barred by showing that he was "usually and publicly" in the demanding State during the three years next after the date at which the crime is alleged to have been committed, and that he therefore could not be a fugitive from justice and subject to extradition?

The scope and limits of the hearing on *habeas corpus* in such cases has not been, perhaps it should not be, determined with precision. Doubt as to the jurisdiction of the courts to review at all the executive conclusion that the person accused is a fugitive from justice has more than once been stated in the decisions of this court, *Ex parte Reggel*, 114 U. S. 642; *Roberts* v. *Reilly*, 116 U. S. 80; *Appleyard* v. *Massachusetts*, 203 U. S. 222; but the question not being necessary for the disposition of the

cases in which it is touched upon, as it is not in this, it is left undecided. This much, however, the decisions of this court make clear; that the proceeding is a summary one, to be kept within narrow bounds, not less for the protection of the liberty of the citizen than in the public interest; that when the extradition papers required by the statute are in the proper form the only evidence sanctioned by this court as admissible on such a hearing is such as tends to prove that the accused was not in the demanding State at the time the crime is alleged to have been committed; and, frequently and emphatically, that defenses cannot be entertained on such a hearing, but must be referred for investigation to the trial of the case in the courts of the demanding State.

The statute of limitations is a defense and must be asserted on the trial by the defendant in criminal cases, *United States* v. *Cook*, 17 Wall. 168; and the form of the statute in Illinois, which the appellant seeks to rely upon, makes it especially necessary that the claimed defense of it should be heard and decided by the courts of that State. *Pierce* v. *Creecy*, 210 U. S. 387; *Charlton* v. *Kelly*, 229 U. S. 447; *Drew* v. *Thaw*, 235 U. S. 432; *Reed* v. *United States*, 224 Rep. Fed. 378; *Depoilly* v. *Palmer*, 28 App. D. C. 324.

It results that the decision of the District Court must be *Affirmed.*